S T A T E O F M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the Application of DTE GAS COMPANY for approval of a Gas Cost Recovery Plan, Five-Year Forecast, and Monthly GCR Factor for the 12-months ending March 31, 2016	)))))	Case No. U-17941

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on January 5, 2017.

Exceptions, if any, must be filed with the Michigan Public Service Commission, 7109 West Saginaw, Lansing, Michigan 48917, and served on all other parties of record on or before January 20, 2017, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before February 3, 2017. **The Commission has selected this case for participation in its Paperless Electronic Filings Program. No paper documents will be required to be filed in this case.**

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

MICHIGAN ADMINISTRATIVE HEARING SYSTEM
For the Michigan Public Service Commission

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Mark D. Eyster
Administrative Law Judge

January 6, 2017
Lansing, Michigan

S T A T E O F M I C H I G A N

MICHIGAN ADMINISTRATIVE HEARING SYSTEM

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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DTE GAS COMPANY for approval of a	)	
Gas Cost Recovery Plan, Five-Year Forecast,	)	Case No. U-17941
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ending March 31, 2016	)	

PROPOSAL FOR DECISION

Issued and Served: January 6, 2017

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FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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PROPOSAL FOR DECISION

I. PROCEDURAL HISTORY

On December 30, 2015, the DTE Gas Company (DTE Gas, or Company) filed an Application requesting Michigan Public Service Commission (Commission) approval of a Gas Cost Recovery plan (Plan) and factors for the 12-month period from April 1, 2016 through March 31, 2017.

On February 10, 2016, a pre-hearing conference was held before Administrative Law Judge, Mark D. Eyster. Counsel appeared on behalf of DTE Gas, the Michigan Public Service Commission staff (Staff), the Attorney General for the State of Michigan (Attorney General), the Retail Energy Supply Association (RESA), and ANR Pipeline Company (ANR). At the pre-hearing conference, intervenor status was granted to the Attorney General, RESA, and ANR.

A full evidentiary hearing was conducted on July 11-12, 2016, at which the pre-filed testimony of the witnesses was bound into the record, exhibits were admitted into evidence, and cross-examination was conducted. On August 12, 2016, briefs were filed by DTE Gas, Staff, RESA, ANR, and the Attorney General. On September 2, 2016, reply briefs were filed by DTE Gas, RESA, ANR, and the Attorney General. The record consists of testimony contained in the 629 page transcript and 86 exhibits.

II. FINDINGS OF FACT, POSITIONS OF THE PARTIES, AND DISCUSSIONS

A. Introduction

DTE Gas presented the testimony of six witnesses: James A. Brunell, a Consultant in Regulatory Affairs employed by DTE Energy Corporate Services, LLC.; Sherri M. Moore, a Senior Gas Supply & Planning Analyst employed by DTE Gas; Robert G. Lawshe, DTE Gas' Manager of Gas Supply and Planning; Michael D. Sloan, Principal, Energy Advisory Services with ICF International; George H. Chapel, Manager, Market Forecasting for DTE Gas, and; W. Bernard Kramer, a Regulatory Compliance Consultant in DTE Energy Corporate Services LLC's Regulatory Policy and Operations Department.

Mr. Brunell provided testimony to address the calculation of DTE Gas' proposed monthly base GCR factor, the contingent mechanism and its implementation, the five-year forecasted cost of gas, and the administration of DTE Gas's Supplier of Last Resort (SOLR) Reservation Charge. He also presented rebuttal testimony in response to evidence presented by the Attorney General. Mr. Brunell was subject to cross-examination. He sponsored exhibits A-20 through A-24, exhibit A-28, exhibit A-36, and exhibit A-37.

Ms. Moore provided direct testimony to describe DTE Gas's operational plan for the five-year period from April 1, 2016 through March 31, 2021. She sponsored exhibits A-13 through A-18.

Mr. Lawshe provided evidence for addressing a variety of subjects, including: DTE Gas' natural gas supply plan for April 1, 2016 through March 31, 2021; DTE Gas' Volume Cost Averaging (VCA) method for the purchase of fixed price gas supply; DTE Gas' gas price forecast; DTE Gas' plans for a $0.28 per Mcf Reservation Charge to both GCR and Gas Customer Choice (GCC) customers to cover costs associated with its status as the SOLR; changes to DTE Gas' transportation portfolio, and; DTE Gas' arrangements with NEXUS Gas Transmission. In addition, he provided rebuttal testimony to address matters raised by ANR's witness, Mr. Bennett; the Attorney General's witness, Mr. Coppola, and; RESA's witness, Mr. Dishno. He was subject to cross-examination and sponsored exhibits A-7 through A-12, A-25 through A-27, and A-29 through A-32.

Mr. Sloan provided direct testimony primarily to explain his opinion regarding the usefulness of the NEXUS pipeline and to support the admission of exhibit A-34, an ICF report titled, "The Value of Nexus Pipeline Capacity to DTE Gas Customers: December 2015 Update". He also provided rebuttal testimony to address the testimony provided by ANR's Mr. Bennett and the Attorney General's Mr. Coppola. Mr. Sloan was subject to cross-examination. In addition to exhibit A-34, he sponsored exhibits A-33, A-35, and A-48 through A-50.

Mr. Chapel provided direct testimony to address aspects of DTE Gas' Five-Year Forecast and the reasonableness of its Plan. He sponsored exhibits A-1 through A-6.

Mr. Kramer presented evidence to address federal regulatory issues affecting DTE Gas and DTE Gas's activities before FERC and the NEB. He also addressed gas transportation cost assumptions used by Mr. Lawshe to develop forecasted gas transportation costs.

RESA presented one witness, Daniel Dishno, Vice-President of Supply for IGS. He provided direct testimony addressing DTE Gas' proposed Reservation Charge. He was not subject to cross-examination. He sponsored exhibit RES-1.

ANR called one witness, Lee Bennett, Manager, Pricing and Business Analysis for TransCanada, U.S. Pipelines. Mr. Bennett provided direct testimony addressing alternatives to DTE Gas' plan to purchase 75,000 Dth/d of firm transportation capacity on the NEXUS pipeline; a pipeline co-owned by DTE Energy. He was not subject to cross-examination.

Testifying for the Attorney General was Sebastian Coppola, an Independent Energy Business Consultant. He provided direct testimony to explain his analysis of DTE Gas' Plan. He sponsored Exhibits AG-1 through AG-5 and was not subject to cross-examination.

Staff presented no witnesses and no exhibits.

At the parties' request, notice was taken of the records in Case U-17691 and Case U-17920.

B. Plan and Five-Year Forecast Overview

DTE Gas expects to serve approximately 1,244,607 customers in the GCR year. Exh A-1. By the 2020-21 plan year, DTE Gas expects this figure will rise to approximately 1,279,000 customers. Exh A-1. DTE Gas projects GCR customer counts of 1,059,019 for 2016-17, rising to 1,093,495 for 2020-21. Exh A-1. DTE Gas projects falling GCR sales volumes, of 114.2 Bcf for 2016-17, 111.8 Bcf for 2017-18, 111.3 Bcf for 2018-19, 112.1 Bcf for 2019-20, and 111.3 Bcf for 2020-21. Exh A-1. For each year of the five-year forecast, DTE Gas projects 185,588 customers will be served by an alternate supplier through the GCC program. 3 Tr 498. Exh A-1. DTE Gas projects GCC sales volumes of 31.8 Bcf in 2016-17, steadily dropping to 30.3 Bcf for the 2020-21 Plan year. 3 Tr 498. Exh A-1. DTE Gas projects total GCR/GCC gas sales of 146,074 Bcf for the GCR year, falling to 141,627 Bcf in year five of its Five-Year Forecast. 5 Tr 729. Exh A-1[1].

Projected natural gas prices, for the Plan year and for the Five-Year Forecast are found in Exhibit A-8 and are described at 2 Tr 245-46. To make purchases, DTE Gas maintains a list of about 30 suppliers from which it "generally solicits at least three verbal offer prices" from the desired supply area. 2 Tr 247. DTE Gas "will attempt to enter into transactions with the lowest price supplier", but gives consideration to supplier diversity, performance history, creditworthiness, and ability to deliver to alternate receipt points. 2 Tr 247. DTE Gas does not issue Requests for Proposal to meet its supply requirements. 2 Tr 247.

For the GCR Plan year, DTE expects the following supply basin sources with their percentage of supply: Mid-Continent – 52%, Canadian – 42%, and Gulf Coast – 6%. 2 Tr 257.

In this case, DTE Gas has utilized weather data from 2000 to 2014 to calculate its 15-year normal weather. 3 Tr 491. "Weather normalization adjusts actual volumes from a past period to eliminate the impact of abnormal weather on the data during that time period. Weather normalized data is then used to make inferences about customer behavior trends." 3 Tr 490.

[1] This is a significant downward adjustment to the previous Plans projections. DTE Gas' attributes this to the effects of its energy optimization program and an expected increase of system-average heating values on its system. 3 Tr 489.

DTE Gas proposes a maximum GCR factor of $3.44 per Mcf for the GCR year, adjustable monthly based upon a contingent factor matrix. 2 Tr 51-52. Exh A-20.

DTE Gas proposes the continuation of fixed price gas purchase pursuant to the VCA methodology; first approved by the Commission in Case No. U-16146. 2 Tr 228. “In general, DTE Gas [proposes to] fix the price of its future supply requirements over a two year period prior to the start of delivery during the GCR Period. In other words, the price of 75% of DTE Gas’ supply requirements will be known prior to the start of the GCR Period.” 2 Tr 229. The remaining 25% of its gas supply will be purchased at index price. 2 Tr 241.

“DTE Gas maintains a portfolio of 400 MDth/day of firm transportation contracts for the winter operating season and 330 MDth/day for the summer storage injection season to meet supply requirements for normal weather, colder than normal weather, design day, and supplier of last resort.” 2 Tr 248. For 2016-17, DTE Gas made one change to its transportation portfolio; it changed a Panhandle Eastern Pipe Line (PEPL) 10 MDth/d to a 10 MDth/d winter-only capacity on PEPL. 2 Tr 255. Information regarding its interstate transportation contracts can be found in exhibit A-9. For transportation contracts that expire during April 2017 through March 2018, DTE Gas plans to renew contracts to cover all, except 75 MDth/day capacity, which it plans to replace with capacity on the NEXUS pipeline. 2 Tr 256.

DTE Gas owns and operates four gas storage fields in Michigan. 3 Tr 512. The Six Lakes field is located in central Michigan and operated in a base load manner. 3 Tr 512. The Belle River Mills and Columbus fields are located in St. Clair County and operated as peaking fields. 3 Tr 512. The West Columbus field, also in St. Clair County, is operated as a base load field. 3T 512. DTE Gas's plans for a current aggregate cycleable working storage capacity of 135.1 Bcf. 3 Tr 513. Details about DTE Gas' Storage Plan were provided at 3 Tr 512-16 and in Exhibits A-13 through A-18.

As summarized in Exhibit A-10, DTE Gas projects a total expected gas purchase quantity of 133.7 MMDth and a total expected gas purchase cost of $423.7 million for the April 2016 through March 2017 period. 2 Tr 258. As summarized in Exhibit A-11, DTE Gas expects transportation and Parking Service costs of $ 44.7 million for the period April 2016 through March 2017. 2 Tr 258.

An explanation of the legal and regulatory actions taken by DTE Gas to minimize the cost of gas was included in the Plan and can be found at 3 Tr 532-47.

C. Contested Matters

1. Introduction

For most components of the Plan and 5-year Forecast, DTE Gas' factual assertions are unopposed and not in dispute. With regard to the Plan, for those uncontested matters, DTE Gas' representations appear reasonable and, unless otherwise noted, are approved. The contested issues are addressed below.

2. NEXUS

i. Findings of Fact

DTE Energy and Spectra Energy Corp are jointly developing the proposed NEXUS gas transportation pipeline project designed to transport Appalachian Basin gas to customers in the U.S. Midwest and Ontario, Canada. 2 Tr 262. Commencement of service on NEXUS is targeted for November 2017.[2] 2 Tr 262. New construction on the

[2] To date, NEXUS has not received approval for construction by FERC.

proposed NEXUS pipeline will run approximately 250 miles from receipt points in eastern Ohio to DTE Gas' existing pipeline grid in southeastern Michigan. 2 Tr 262. NEXUS shippers will be able to reach Dawn, Ontario via DTE Gas pipelines[3] or via Vector Pipeline, L.P., another DTE Gas affiliate, through capacity NEXUS intends to acquire from these affiliates. 3 Tr 598-99. NEXUS is expected to have a total transport capacity of 1.5 Bcf/d. 3 Tr 599.

As part of its Five-Year Forecast, DTE Gas has included a proposed 15-year transportation contract with NEXUS. As stated by Mr. Lawshe, at 2 Tr 267:

> DTE Gas . . . [executed a] Precedent Agreement dated July 23, 2014 [(2014 PA)] with DTE Pipeline Company and Spectra Energy Transmission, LLC that provides for a 15-year transportation contract to transport 75 MDth/d of Utica and Marcellus shale production gas to the DTE Gas system with an anticipated start date of November 1, 2017. One of the conditions

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[3] Notice is taken of DTE Gas' November 24, 2015, Abbreviated Application of DTE Gas Company for Issuance of Limited Jurisdiction Certificate to Lease Pipeline Capacity to NEXUS Gas Transmission, LLC for Use to Transport Natural Gas in Interstate Commerce (Abbreviated Application). In the Abbreviated Application, DTE Gas requested approval of a Capacity Lease with NEXUS and approval of a limited jurisdiction certificate to allow for the interstate transportation of gas through DTE Gas' system. At page 3-6 of the Abbreviated Application, DTE Gas explained:

> Pursuant to the Capacity Lease, NEXUS has agreed to lease existing unsubscribed capacity as well as expansion capacity from DTE Gas. The capacity proposed to be leased extends from a new interconnect between NEXUS and DTE Gas in Ypsilanti Township, Michigan (Willow Run) to (1) the Vector-Milford Junction interconnect (Milford Meter Station) between DTE Gas and Vector Pipeline (Vector), (2) the Vector-Belle River interconnect between DTE Gas and Vector, and (3) the Union-St. Clair interconnect between DTE Gas and Union Gas Limited (Union) at the U.S./Canada border. The Capacity Lease will utilize existing capacity on DTE Gas's system as well as expansion capacity created by additional compression at existing DTE Gas compressor stations. The construction of the associated DTE Gas expansion capacity will be subject to the jurisdiction of the MPSC . . . .
>
> * * *
>
> DTE Gas will continue to own, operate and maintain all of its facilities on an integrated basis. However, NEXUS will have the right to use the leased capacity on a firm basis to provide transportation services to its customers pursuant to NEXUS's FERC Gas Tariff.
>
> The daily quantity of firm pipeline capacity associated with the Capacity Lease, exclusive of any fuel gas, from the receipt point to the delivery points will be between 1,001,829 and 1,501,829 Dth/d, subject to and depending on the exercise of certain NEXUS rights to increase or reduce its contracted capacity as provided in the Capacity Lease.
>
> * * *
>
> The lease charges under the Capacity Lease . . . are less than firm transportation rates for comparable service on the DTE Gas pipeline system.

See FERC Docket No. CP-16-24. FERC documents may be found at http://www.ferc.gov/docs-filing/ferconline.asp precedent contained in the [2014 PA] is the receipt of sufficient regulatory approval from the MPSC by June 1, 2016.

As it has in prior cases, DTE Gas "continue[s] its pursuit of Commission approval of the NEXUS transport contract". 2 Tr 266. At the close of the record, no such NEXUS transport contract existed. However, DTE Gas expects the transportation arrangement with NEXUS will include a monthly reservation charge of $0.695 per Dth per day of MDQ, plus a fuel rate of 1.51%[4], and a $0.00 per Dth usage charge. 2 Tr 263. This results in an average monthly Reservation cost of $1.6 million[5] for 15 years from the NEXUS in-service date. 4 Tr 263.

At 4 Tr 272-73, to explain DTE Gas' position, Mr. Lawshe stated:

> The unique nature of the NEXUS transportation capacity and its importance for DTE Gas's customers and the state of Michigan in general requires Commission support and approval at this time to make the benefits of the NEXUS pipeline and the transport capacity in the DTE Gas supply portfolio a reality. . . . [I]f the NEXUS pipeline gets built, and DTE Gas acquires 75 MDth/d of NEXUS capacity, then it would reduce the cost of gas to DTE Gas GCR customers by up to $847 million over the 15-year period November 2017 through March 2032 . . . . In light of these results, DTE Gas plans to start taking the necessary steps during the 2016-2017 GCR Plan Year to replace 75 MDth/d of existing transport with NEXUS capacity effective November 1, 2017. Commission approval of DTE Gas's transportation arrangement with NEXUS Gas Transmission would benefit not only the customers of DTE Gas, but would also give the support needed for this greenfield pipeline project that will bring new shale gas resources to the state of Michigan with an estimated $2.9 billion reduction in natural gas costs for all Michigan consumers over the 15-year period . . . .

At 4 Tr 264-65, Mr. Lawshe provided his opinion that:

> The addition of NEXUS Gas Transmission to the DTE Gas transportation portfolio is expected to lower the cost of gas for DTE Gas customers . . . and would increase both DTE Gas' security of supply and diversity of supply. Diversity of supply is achieved by providing access to the Utica and Marcellus shale gas . . . . Security of supply is achieved by providing greater volumes of gas that can be delivered into the DTE Gas

[4] This is up from the 1.22% rate DTE Gas projected in its last GCR Plan case.

[5] $1.6 million = (75,000Dth/d) X ($0.695/Dth) X (365days/year) / (12months/year). 2 Tr 263.

system from this new and burgeoning production region . . . . [A]ccess to the Utica and Marcellus shale gas reserves will position DTE Gas with the ability to secure abundant, long term, cost effective natural gas supply to serve its customers well into the foreseeable future.

* * *

NEXUS is . . . expected to bring . . . lower price gas . . . for all natural gas consumers in the state of Michigan . . . . The NEXUS pipeline will benefit the State of Michigan through increased tax revenues, and it is anticipated to create more jobs, bring economic development, provide supply for potential gas fired electric generation to meet market growth and replace aging coal fired plants with reduced pollution emissions.

The history of DTE Gas' involvement with NEXUS goes back several years and its beginning is less than clear.[6] As for the agreement in question, Mr. Lawshe revealed that "DTE Gas selected to bid on NEXUS in 2012, and continued from that point forward to develop its supply portfolio with NEXUS in its plans." U-17691, 4 Tr 385. As a result of this decision, DTE Gas submitted a NEXUS Open Season bid in November 2012. U-17691, 4 Tr 301. Mr. Lawshe explained that, when DTE Gas submitted its bid, NEXUS "was the only greenfield pipeline project . . . designed to transport . . . Appalachian Basin gas . . . to customers in Michigan and the surrounding area" U-17691, 4 Tr 302. At 2 Tr 270, Mr. Lawshe also explained that:

At the time NEXUS announced its open season notice for firm transportation service in October 2012, . . . DTE Gas was looking to increase both its long term security and diversity of supply with Appalachian Basin gas, . . . from a new single pipeline resource; with the intent to secure lower cost gas supply for its customers by fostering additional competition with existing interstate transport providers, and fostering additional competition with existing and future supply sources feeding into those existing pipelines.

* * *

[DTE Gas'] short-term objectives were to renew or replace a portion of its existing transportation portfolio with a diversity of short-term (three to five year) capacity on a diversity of existing transportation paths, from a

[6] It is reasonable to conclude that DTE Gas' involvement with NEXUS significantly predates NEXUS' original open season because the NEXUS project relies upon the lease of transportation capacity across the DTE Gas pipeline system.

> diversity of service providers, connected to a diversity of existing, mature, and liquid trading points at competitive rates. Additionally, DTE Gas was interested in short-term to mid-term transport from new major pipeline interconnects on a limited basis to gain familiarity with the pipelines providing delivery to that interconnect, depending on the maturity and expected liquidity of trading at the receipt point at that time.

According to Mr. Lawshe, on December 23, 2013, then DTE Gas Vice-President for Gas Sales and Supply, Mark W. Stiers, signed an undated Precedent Agreement (2013 PA) that went unsigned by DTE Pipeline Company, Spectra Energy Transmission, LLC, and Enbridge Inc.; collectively the then contemplated co-owners of the NEXUS pipeline. 2 Tr 263. See Exh A-30. With Mr. Stiers signature, Mr. Lawshe testified that "we[7] considered that a . . . binding commitment to the [NEXUS] pipeline". U-17691 4 Tr 395. Five days prior to signing the 2013 PA, Mr. Stiers had discussions with ANR's then Vice-President of Marketing, Dean Patry, who shared his opinion "that ANR could provide a far superior project than NEXUS utilizing its existing assets to provide access to Utica supply at a fraction of the cost of NEXUS" and asked "for a chance to compete against NEXUS." 3 Tr 602. None-the-less, prior to signing the 2013 PA, DTE Gas performed no comparisons of alternatives to NEXUS because, based on the criteria[8] that it had developed, it considered none to be available. 2 Tr 269. However, absent the self-imposed limiting criteria, other less expensive options were available.

Exhibit ANR-11 provides a convenient visual representation of the numerous options available to DTE Gas. DTE Gas new or should have known of these options and, in fact, on October 21, 2013, presented a non-conforming bid for service on the Lebanon Lateral Reversal project; non-conforming because of DTE Gas' request that it expire on

[7] The record does not make clear who "we" refers to.

[8] In Case No. U-17691, Mr. Lawshe stated that DTE Gas' criteria limited its consideration to a greenfield project delivering gas to the DTE Gas system from the Utica Marcellus basin, i.e. NEXUS. U-17691 4 Tr 386.

the projected NEXUS in-service date[9]. Exh A-44. 2 Tr 351-353.

Negotiations over the 2013 PA took place between Mr. Lawshe, on behalf of DTE Gas, and David Slater, on behalf of DTE Pipeline Company, and extended over four months. U-17691, 4 Tr 305, 358. Mr. Lawshe's negotiations were solely with Mr. Slater and did not involve anyone from Enbridge and Spectra, the other companies that were then involved with NEXUS. U-17691, 4 Tr 358.

At 2 Tr 272, Mr. Lawshe provided his opinion that:

> Supporting the NEXUS Pipeline . . . was desirable because the Company expected the project to reduce gas cost . . . by providing access to one of the largest and fastest growing sources of supply in North America from a new single pipeline resource that would create additional competition with both the existing interstate transport providers and compete with existing and future supply sources feeding into those pipelines.

At some time between December 2013 and July 2014, Enbridge withdrew from the NEXUS pipeline project and, on July 23, 2014, DTE Gas signing a second PA; the 2014 PA[10] with DTE Pipeline Co and Spectra. U-17691, 4 Tr 289, 364-66. DTE Gas did not engage in any additional meaningful negotiations prior to signing the 2014 PA. U-17691, 4 Tr 289, 365-66.

At no time between October 2112 and July 2014, did DTE Gas solicit ANR for the transportation of additional gas to DTE Gas, knowing that ANR would have been interested in doing so. U-17691 4 Tr 367-69. However, in early July, 2014, DTE Gas

[9] Mr. Lawshe testified that DTE Gas was able to sign a different capacity agreement to tide itself over until the in-service date for NEXUS. However, Mr. Lawshe could not indicate which contract that was nor its cost. 2 Tr 353-55.
[10] A copy of the 2014 PA was entered into evidence as A-31.

personnel met with representatives for the ANR East[11] and Rover[12] pipeline projects and asked what "rates should be used in its analyses regarding transport routes from Appalachian sources". 2 Tr 291. In both instances, DTE Gas was told to use the rates from their respective open season for analysis. 2 Tr 291. Mr. Lawshe indicates that neither ANR East nor Rover representatives offered or indicated "that they would be willing to negotiate with DTE Gas for any rates or terms other than those offered in their respective Open Season documents." 2 Tr 292. Thereafter, at some time in July, DTE Gas did perform landed cost analysis for the ANR East and Rover projects based on the rates posted for the projects' open seasons. U-17691, 4 Tr 369-74. Prior to conducting this analysis, DTE Gas did not seek information regarding lower than posted rates nor specific rates for 75,000 dth/day for 15 years. U-17691, 4 Tr 373-74. When asked to explain why DTE Gas had engaged in extensive negotiations with its affiliate for transportation on NEXUS, but didn't do the same with regard to ANR East and Rover, Mr. Lawshe explained, at U-17691, 4 Tr 376-77:

> First, our portfolio needs for long-term transportation at that point in time were filled with the NEXUS capacity[13]. The NEXUS capacity is a

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[11] The ANR East project is now defunct. As explained by Mr. Bennett, at 5 Tr 779:

> ANR East proposed to construct 240 miles of large diameter pipeline extending east of ANR's existing system from Defiance, Ohio to points in eastern Ohio, including Leesville and Clarington. ANR East was designed to provide additional access to Utica and Marcellus shale gas, with delivery into the same Michigan and Ontario markets as NEXUS, as well as to other markets connected to ANR's system. ANR East was designed to transport up to 2.0 Bcf/d of Appalachian supply from Clarington, Ohio to Leesville, Ohio and 2.4 Bcf from Leesville to ANR's existing system at Defiance, Ohio. In its July 3, 2014 open season, ANR outlined several options, with indicative rates. . . . The options include a transportation path from either Leesville or Clarington to various points, including Willow Run, which serves DTE Gas . . . .

[12]At 5 Tr 780, Mr. Bennett explained that:

> Rover consists of 237 miles of gathering pipeline in Ohio, Pennsylvania and West Virginia and a 374 mile duel 42 inch pipeline system from Cadiz, Ohio to Defiance and then another 100 miles of pipeline from Defiance to an interconnection with Vector. The project can deliver up to 3.25 Bcf/d from eastern to western Ohio along a similar route as ANR East.

[13] DTE Gas' claim that it was dedicated to NEXUS is specious and is based on its positon that its sole signature to the 2013 PA, a PA that was never signed by the NEXUS partners, was binding upon DTE Gas.

> long-term project that takes a long time to develop over time. The rates that we negotiated with NEXUS were more structured around the type of rates, whether it was a fixed rate or there was a band of rates, or whether it was a variable rate subject to capital cost tracker. We settled with an agreeable level with NEXUS at that time.
>
> As far as ANR East and Rover, they came in after the fact, and that we looked at our portfolio to see if there was any additional need for long-term commitment, at the rates that they had offered, and we didn't see any need at that time or any reason to try and swap out the -- our commitment to the NEXUS project.

At 2 Tr 289, Mr. Lawshe provided the following explanation:

> DTE Gas did not participate in either the Rover or ANR East Open Season projects primarily because: (1) a landed cost analysis showed that NEXUS was the least cost alternative compared to the rates offered by ANR and Rover in their open seasons; (2) DTE Gas had already committed to the NEXUS Pipeline at the time ANR East and Rover were conducting their open seasons; and (3) DTE Gas could not bid on Rover because it was a binding open season and DTE Gas had already committed to the NEXUS Pipeline.

Mr. Lawshe provided further justification for contracting with NEXUS by citing to DTE Gas' status as an "Anchor Shipper" on NEXUS that required its 15 year commitment to a volume of 75 MDth/day, rather than to 20 years at 250 MDth/day that would have been required by ANR East. U-17691, 4 Tr 290-91. Mr. Lawshe stated DTE Gas' position that acquiring "Anchor Shipper" status on NEXUS "was desirable because it provided the . . . benefit of a guarantee . . . that the rate paid by DTE Gas would be the lowest rate paid by any similarly situated shipper on NEXUS. U-17691, 4 Tr 291.

ANR's witness, Mr. Bennett, calls in to question whether DTE Gas' actually has status as an Anchor Shipper, as that requires a 150,000 Dth/d commitment and DTE Gas commitment is to only half that amount. U-17691, 5 Tr 782-83. And, assuming DTE Gas has this status, he downplays its significance, because "if 'Anchor Shipper' status were provided to all shippers that subscribe to only 75,000 Dth/d or more on a 1.5 Bcf project, there likely would not be many shippers that did not qualify for that status, which would dilute the value of such status." U-17691, 5 Tr 783.

However, Mr. Lawshe explained that DTE Gas obtained Anchor Shipper status because the "150,000 Dth/day commitment could come from any combination of corporate entities and DTE Gas committed to 75,000/d and [DTE electric] took the remainder". U-17691, 4 Tr 315-16. Further, in U-17691, Exh ANR-19, Mr. Lawshe added:

> DTE Electric has entered into a Precedent Agreement with NEXUS Gas Transmission to provide firm natural gas transportation for 8,500 DTH per day starting in Nov 2017 and increasing to 75,000 DTH per day starting on the later of May 2020 or when DTE Electric has added the required electric generating capacity and supporting infrastructure needed to utilize the increased volume requirement. In addition, DTE Electric has the ability to increase the amount of capacity from 75,000 DTH per day up to 150,000 DTH per day starting in May 2022.

Exhibit ANR-11 provides a timeline of projects designed to transport Appalachian gas to the Midwest. This is the same exhibit that was entered into evidence in Case No U-17691, as Exhibit A-12. In Case No U-17691 it was established that, of the projects listed in Case No U-17691, Exhibit ANR-12, DTE Gas did not consider any, including the following, as alternatives to NEXUS: ANR's Lebanon Lateral through a reversal of flow to ANR's SE line to DTE Gas; Texas Eastern at Glen Karn to ANR's SE line to DTE Gas; REX at Shelbyville to ANR's SE line to DTE Gas; Rover at Westrick to ANR's SE line to DTE Gas. U-17691, Exh ANR-17. In Case No U-17691 Exhibit ANR-17, Mr. Lawshe justified DTE Gas' decision to not consider any of these alternative by stating:

> DTE Gas did not consider transportation service from any of the routes as an alternative to NEXUS because each of the transportation paths were not available at the time DTE Gas selected the NEXUS transportation service. DTE Gas had already bid on the NEXUS Open Season and was well into negotiation of the Precedent Agreement with NEXUS by then.

However, at Case No U-17691, 4 Tr 386, Mr. Lawshe stated that "[t]hey were never considered an alternative to NEXUS because they were not greenfield projects delivering gas to the DTE Gas system from the Utica Marcellus basin."

In this case, it has become increasingly clear that, during the relevant timeframe, Mr. Lawshe's understanding of these alternative pipeline systems and what they could provide was woefully deficient. See Generally 2 Tr 381-89. In fact, on cross examination, Mr. Lawshe stated that "we", presumably DTE Gas, "were not pursuing those capacities for long term, we were unfamiliar with the systems, that if there was even gas supply available, how it's interconnected, these upstream pipes, we just didn't have the familiarity with it." 2 Tr 386. Mr. Lawshe added that, "[a]gain, that's why we hired ICF in early 2013 to capture that expertise". 2 Tr 386. It appears, however, the ICF was hired in 2014, after, according to Mr. Lawshe, DTE Gas considered itself committed to NEXUS. 2 Tr 269, 386.

Mr. Bennett presented evidence questioning the reasonableness of DTE Gas' investigation into alternatives to NEXUS. At 3 Tr 601-02, he explained that:

> Typically, pipelines will hold open seasons intended to generate interest in their projects. The pipeline will then open a dialogue with interested shippers to negotiate rates and rate-related terms and conditions that will satisfy the shippers' needs. In a situation where there are several projects competing for the same business, each pipeline does its best to meet the competition. Conversely, shippers that desire capacity on one of several competing projects . . . will attempt to negotiate the best price and other terms as it can.

Mr. Bennett, explained that, on July 9, 2014, "two of ANR's marketing and business development representatives met with DTE Gas at its offices and . . . reviewed the terms of ANR's recent open season announcement for the ANR East . . . . Although DTE Gas indicated at that meeting that it may submit a bid for capacity on the project, it never made such a bid, nor did it show any interest in the project after that brief meeting." 3 Tr 602. Despite these overtures, "at no time did DTE Gas either ask ANR for an offer for 75,000 Dth/d for a 15 year term, or otherwise attempt to negotiate a rate for service on . . . any . . . ANR alternative." 3 Tr 602-02. At U-17691, 5 Tr 786-77, Mr. Bennett added:

> DTE Gas did not submit a request for proposals ("RFP") or otherwise solicit bids for the transportation service it desired. . . . Mr. Lawshe states that DTE Gas did not because "at the time DTE Gas entered into discussions with NEXUS, there were no other pipelines proposing the same pipeline path as NEXUS."[14] . . . There are two problems with this explanation. First, NEXUS' open season was in 2012. There was no need for DTE Gas to limit its discussions for service expected to commence five years later to one provider. Surely, had DTE Gas announced an RFP or otherwise solicited bids at any time during the next two years, providers such as ANR and Energy Transfer would have responded given their participation in these markets. Second, there was no need for DTE Gas to limit the service it requested to the specific path proposed by NEXUS. DTE Gas should have requested proposals to have Appalachian gas supply delivered to its city gates and chosen the most cost effective and reliable service option.

Since then, DTE Gas has rejected or otherwise failed to acquire affordable capacity on alternatives to NEXUS. As example, on May 15, 2015, ANR offered DTE Gas 50,000 Dth of capacity on its Midwest Market Access Project (MAPP) "from Shelbyville at a rate of either $.20 or $.25 depending on the term and delivery point selected." 3 Tr 621. DTE Gas has failed to meaningfully respond to this offer. 3 Tr 621. Mr. Lawshe claims DTE Gas' failure to do so was caused by a Confidentiality Agreement between DTE Gas and ANR that he claims "prevented DTE Gas from not only revealing any negotiations such as those on the Term Sheet, but it prevented any mention of the existence of said Confidentiality Agreement or the fact that any discussions had taken place." 2 Tr 299. On cross-examination, Mr. Lawshe agreed that it was his opinion that

[14] See Exh. ANR-4

DTE Gas "couldn't negotiate with ANR for long-term capacity on [the MMAP] because [DTE Gas] would need to include the capacity in a future GCR filing, and the Confidentiality Agreement would preclude [DTE Gas] from doing so". 3 Tr 409. Mr. Lawshe's explanation is not convincing and is unreasonable for two reasons. First, section 2(c) of the original agreement specifically contemplates and allows for disclosures in regulatory proceedings. Exh ANR-18. Second, on cross-examination, Mr. Lawshe wouldn't say whether DTE Gas would have negotiated for capacity even if he believed the confidentiality agreement permitted disclosure to the MPSC. 3 Tr 409-10.

DTE Gas presented Exhibit A-34, a copy of a report, submitted to Mr. Lawshe by ICF Resources, L.L.C. titled "The Value of Nexus Pipeline Capacity to DTE Gas Customers: December 2015 Update" (the Report). As explained in the Report, "ICF was engaged by DTE Gas . . . to assess the value to DTE Gas customers of holding capacity on the proposed NEXUS Gas Transmission Project . . . from the Marcellus/Utica gas producing basins in eastern Ohio/Western Pennsylvania to the DTE citygate in Michigan." Exh A-30, p 7. DTE Gas witness, Mr. Sloan, testified to sponsor the Report, an update of a similar report that he provided DTE Gas in 2014.

Mr. Sloan anticipates that the addition of capacity from the Appalachian Basin to Michigan will lead to a reduction in the price of natural gas. 2 Tr 107-08. With the addition of NEXUS, he estimates gas prices for DTE Gas customers will be reduced by $386 million over the period November 2017 to October 2032. 2 Tr 108-09. With the addition of NEXUS and Rover[15], he estimates gas prices will be reduced a lesser amount of $251 million[16] over the same period. 2 Tr 108-09. This savings is based solely on a reduction

[15] Mr. Sloan considers it likely that Rover will be built. 2 Tr 142.
[16] This saving is not reliant upon DTE Gas holding capacity on NEXUS. 2 Tr 143.

of natural gas prices, and does not account for changes in supply portfolio or pipeline capacity portfolio. U- 17691, 5 Tr 604. Given its current configuration, if NEXUS "is the only pipeline built between the Appalachian Basin and Michigan, Mr Sloan projects that "holding capacity on NEXUS will allow DTE Gas to reduce its gas supply portfolio costs by about $461 million during the 15 year contract period". 2 Tr 110. He projects that, if "both NEXUS and Rover are built, then the savings due to holding capacity on NEXUS would be approximately $124 million." 2 Tr 110.[17] Combined, Mr. Sloan projects total cost savings from holding capacity on NEXUS to reach $847 million, if only NEXUS is built, and $375 million, if both NEXUS and Rover are built.[18][19] 2 Tr 111-12.

To calculate the cost of NEXUS, Mr. Sloan relied, in part, on a 1.22% fuel rate estimate provided to him by DTE Gas. During cross-examination, Mr. Sloan acknowledged that he had not seen any of the studies that produced that estimate and that it was based on outdated pipeline specifications. U-17691, 5 Tr 636-41. The 1.22% fuel rate is the same figure that Mr. Lawshe used in his landed cost analysis dated December 2014[20]. Exh A-40. To compare the cost of NEXUS to ANR East and Rover, DTE Gas has consistently used a gas rate of 2.00% for those projects.[21] 3 Tr 604. Exh A-39. Exh A-40. An accurate fuel rate is a critical component of calculating the actual

[17] In case No. U-17691, Mr Sloan estimated these figures at $257 million and $39 million, respectively. U-17691, 5 Tr 605-06.
[18] Mr. Sloan's assessment of the benefits of NEXUS have increased since he testified in Case No. U-17691, because he believes more gas will be produced in the region and less pipeline capacity will be developed. 2 Tr 119.
[19] Mr. Sloan did not calculate the savings that would be achieved if DTE Gas held capacity on Rover and only Rover is built. See 2 Tr 176-83.
[20] In his July 2014 analysis, Mr. Lawshe used a fuel rate of 1.04%. Exh A-39.
[21] The 2.00% fuel rate estimate for ANR East comes from its posted open season that was made early in the development of the, now defunct, project. 3 Tr 604. The source of the 2.00% fuel rate estimate for Rover is unclear.

comparative costs of alternative pipeline capacity. As explained by Mr. Bennett, at 3 Tr 604:

> Not surprisingly, DTE Gas' analysis showed that NEXUS was slightly less costly than the other alternatives. This result, however, was entirely dependent on the NEXUS' estimated fuel rate of 1.22% and Mr. Sloan's gas price forecasts over the 15 year term of the precedent agreement. The analysis showed that the reservation charges for service on ANR East that were posted in ANR East's open season even without negotiation are lower than the subsequently revised reservation charge DTE Gas agreed to pay NEXUS. The analysis also showed that the gas cost savings were the same for the NEXUS, Rover and ANR East (Leesville) alternatives. Consequently, the sole reason the analysis showed NEXUS being less expensive is that it used an estimated NEXUS fuel rate of 1.22% while using an estimated fuel rate for ANR East and Rover of 2.00%. When that estimated fuel rate was applied to projected increases in gas prices, the result was a fuel cost for ANR East and Rover almost double that of NEXUS.

The NEXUS cost projections that DTE Gas relies upon in this case are unreliable and are based on a 1.22% fuel rate; a figure which, at the time of the filing of its testimony, was no longer accurate. 2 Tr 158. As explained by Mr. Bennet, at 3 Tr 608-09:

> NEXUS has revised its estimated fuel rates three more times since providing DTE Gas with a 1.22% estimate. On September 11, 2015, NEXUS sent DTE Electric . . . a draft Negotiated Rate Statement that estimated a fuel rate of 1.9%. Exhibit ANR-8. Sometime between September 11, 2015 and November 20, 2015, NEXUS sent DTE Gas a draft of a rate exhibit . . . which included an estimated fuel rate of 1.51%. Exhibit ANR-9. . . . Then, when NEXUS filed its application for a certificate, it included a fuel rate matrix that showed an estimated fuel rate of 1.32% for the primary path in DTE Gas' contract. Id.
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> * * *
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> From July 2014 to September 2015, NEXUS' estimated fuel rate increased from 1.04% to 1.22% to 1.91%. And then over the course of the next two months, NEXUS lowered its estimated fuel rate from 1.91% to 1.51% and then to 1.32%, where it stands as of the date of this testimony.

Because of the changing estimates of NEXUS fuel rates, Mr. Bennet concludes that "the fuel rate DTE Gas will pay over the 15-year term of its contract if NEXUS is constructed is simply unknown at this time." 3 Tr 609. Therefore, he concludes, "DTE

Gas' landed cost analysis, which concludes that NEXUS is less costly than ANR East and Rover solely on a projection that NEXUS' fuel rates will [be less than] that of ANR East and Rover, is extremely unreliable." 3 Tr 609. This opinion is supported by the evidence provided and is accepted.

In short, the record makes clear that DTE Gas has dedicated itself to supporting and taking capacity on its affiliate owned NEXUS project. Since 2012, DTE Gas has failed to seriously pursue any of the lower cost alternatives to NEXUS. 2 Tr 355-61. Particularly telling is Mr. Lawshe's admission that, even "if [the] cost of a route from the Appalachian basin to DTE Gas's city gate over two pipelines was in total less than the cost of our single pipeline, [DTE Gas] would not consider the two [pipeline] route alternative". 2 Tr 389. DTE Gas' explanations for its failure to pursue these lower cost alternatives are specious, at best.

ii. Positions of the Parties

a. DTE Gas' Position

DTE Gas "is requesting Commission approval of the NEXUS transportation expense as reasonable and prudent under Act 304." DTE Gas Br, p 29. DTE Gas claims that "the NEXUS project will . . . greatly increase the availability of low cost natural gas supply in Michigan", that it is "expected to increase DTE Gas's security [and diversity] of supply", and that it "should reduce price volatility and increase supply reliability". DTE Gas Br, p 29-30.

DTE Gas states that, in December 2013, it made the decision to take transportation capacity on the NEXUS pipeline "after ongoing negotiations and due diligence". DTE Gas Br, p 30. DTE Gas continues by noting that, on July 23, 2014, it executed the 2014 PA, arguing that it “was the product of ongoing planning and analysis, which included a cost comparison of alternative proposed pipelines from the Marcellus and Utica shale region.” DTE Gas Br, p 30. DTE Gas argues that the “reasonableness and prudence of the NEXUS transportation expense [was] confirmed by subsequent analyses completed by an independent consultant, Michael Sloan of ICF Resources, LLC.” DTE Gas Br, p 30.

DTE Gas indicates that “[a]lthough the anticipated in-service date for the NEXUS capacity is November 1, 2017, DTE Gas is taking the necessary steps during the 2016-2017 GCR Plan Year to replace 75 MDth/day of existing transport with this NEXUS capacity.” DTE Gas Br, p 32 (citations omitted).

Noting that the 2014 PA contains a condition precedent that DTE Gas receive Commission approval “of all DTE Gas’s costs and expenses related to that transportation service”, DTE Gas asks “the Commission [to] review and approve the expense associated with the Company’s NEXUS PA as part of its evaluation of the Company’s five-year forecast.” DTE Gas Br, p 32-33.

It is DTE Gas’ position that a “contract for transportation on the NEXUS pipeline will bring cost savings to its customers” and that it “has provided ample evidence that at the time the Company made its decision to execute the December 2013 NEXUS PA, the NEXUS pipeline was the least cost and most favorable pipeline alternative based on the facts that existed at that time, and remains so today.” DTE Gas Br, p 33-34.

At DTE Gas Rep Br, p 42-43, DTE Gas proposes a “substantial evidence” “evidentiary standard of review for [its] affiliate transaction with NEXUS” and argues:

> Const 1963, Art 6, § 28 requires the Commission’s findings to “be supported by competent, material and substantial evidence on the whole record.”. . . “[S]ubstantial evidence is ‘more than a mere scintilla’ but less than a ‘preponderance’ of the evidence.” Thus, the applicable standard of

> proof for purposes of determining whether the Company's proposals or recommendations are reasonable and prudent is the "substantial evidence" standard, which is a lighter standard than even the "preponderance of the evidence" standard[.]

b. Staff's Position

"Staff believes that DTE Gas' participation in the NEXUS Pipeline Project is reasonable as proposed in its Application, testimony and exhibits in this case." Staff Br, p 3. Staff finds the record "supports the approval of the transportation volume, duration of the terms for the various transportation capacity levels, and the maximum rate." Staff Br, p 3. However, as explained at Staff Br, p 3-4:

> Staff is not recommending approval of the actual contract between NEXUS and the Company. Staff is expressing its approval of the terms of the precedent agreement as described by DTE Gas since the NEXUS precedent agreement itself was not offered by the Company for approval. Staff maintains that when the agreement is finalized, the final contract should be submitted to the Commission for approval.

c. Attorney General's Argument that Approval of NEXUS costs is Barred by MCL 460.6h(7)

The Attorney General argues that DTE Gas' request for Commission approval of the NEXUS costs is statutorily barred. At AG Br, p 7-9, the Attorney General explains:

> [T]he specificity of the language in MCL 460.6h(7) belies any legislative intent to empower the Commission to approve cost items in a 5-year forecast. The point is that MCL 460.6h(7) does not empower the Commission to approve decisions underlying a proposed gas transportation contract even when it may affect GCR expenses during the last 4 years of a 5-year forecast.
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> * * *
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> In interpreting the power conferred upon the Commission by MCL 460.6h, the Commission must consider not only the language in subsection (7), which addresses 5-year forecasts submitted under subsection (4), but also the language in subsection (6), which addresses decisions regarding a GCR plan and factor proposed under subsection (3). Subsection (6) specifically requires the Commission to approve, disapprove, or amend gas cost recovery plans and to approve, reject, or amend the 12 monthly gas cost recovery factors requested by the utility in its gas cost recovery plan. Subsection (7) contains no similar language.

Finding support for its positon in *In re Detroit Edison Co. Applications,* 296 Mich App 101; 817 NW2d 630 (2012), the Attorney General argues, at AG Br, p 10, that:

> Since MCL 460.6h(6) mandates approval, disapproval, or amendment of a gas cost recovery plan and approval, rejection, or amendment of the 12 monthly gas cost recovery factors requested by the utility in its gas cost recovery plan and since MCL 460.6h(7) contains no similar language, the Commission is not authorized to grant DTE Gas Company's NEXUS request. In addition, . . . MCL 460.6j(13)(b) requires the Commission to disallow any capacity charges associated with power purchased for periods in excess of 6 months unless the utility has obtained the prior approval of the [Commission.] MCL 460.6h contains no similar provision. The absence of similar language in MCL 460.6h also indicates the Legislature did not intend to authorize the Commission to approve natural gas contracts in advance.

d. DTE Gas' Response to Attorney General's MCL 460.6h(7) Argument

DTE Gas argues that the Attorney General "relies upon an overly strict interpretation of Act 304". DTE Gas Rep Br, p 4. At DTE Gas Rep Br, p 7-8, DTE Gas explains:

> In applying the . . . rules of statutory construction to Section 7, it is clear that the Commission is not only required to review a gas utility's decision underlying a five-year forecast, but also possesses the requisite statutory authority to provide a judgment or determination of such decision in advance of a future GCR year. However, unlike Section 6, which limits the Commission to approving, disapproving, or amending a GCR plan for a current GCR year, Section 7 provides the Commission with the additional option for issuing an advance warning that indicates if there is a particular expense in the gas utility's five-year forecast that would likely be unrecoverable based on present evidence . . . . In summary, . . . the Commission is endowed with the discretion to exercise at least a couple of options for its order with respect to a five-year forecast pursuant to Section 7 of Act 304: either 1) issuing a final order for a decision underlying a cost item if the evidentiary record for such item is adequately developed, or 2) issuing a Section 7 warning for a cost item if the evidentiary record is not adequately developed since there is still time for a gas utility to present additional evidence. Any other interpretation of Section 7 would render the second . . . sentence of this provision as "surplusage or nugatory," which is prohibited by the rules of statutory construction.

e. The Reasonableness of DTE Gas' Proposed Contract with NEXUS

- *Attorney General*

The Attorney General argues that DTE Gas has failed to establish that its NEXUS proposal "is reasonable and prudent and will minimize future GCR expenses." AG Br, p 11.

Further, the Attorney General argues that DTE Gas "has offered no evidence to show its projected [NEXUS] expenses . . . do not exceed an amount equal to the lower of a reasonable market price or the affiliate's actual expenses", "[as required] under the Commission's Code of Conduct and the Affiliate Transaction Guidelines approved in Case No. U-13470 under MCL 460.10a(4)." AG Br, p 11-12.

Additionally, the Attorney General argues that DTE Gas' "presentation in this case was deficient for not fully considering alternative pipeline suppliers". AG Br, p 13. Relying on Mr. Coppola's testimony, the Attorney General argues that because DTE Gas hasn't engaged in any meaningful negotiations with alternative transporters, "it is not possible to determine if those terms could have been modified to suit DTE Gas's needs at comparable or better rates than NEXUS." AG Br, p 13-14. The Attorney General contends that other pipelines are able to transport Appalachian gas and that, rather than making these arrangements, as every "major gas utility in Michigan" has done, DTE Gas "seems committed to supporting a new pipeline owned by an affiliated company that will increase annual transportation costs for GCR customers by millions of dollars." AG Br, p 16-17.

In addition, the Attorney General considers "the proposed cost savings that DTE claims will occur over the 15-year period from 2017 to 2032 [to be] overstated and speculative." AG Br, p 13. The Attorney General considers DTE Gas' cost savings estimates to be unreliable and argues that they "go against price economic theory and common sense." AG Br, p 15-16. The Attorney General notes that, "[w]hen comparing the major components of cost of gas, i.e. pipeline transportation capacity costs and gas commodity costs, for the baseline 2016-2017 GCR period to the 2018-2019 period, which is subsequent to the start of the NEXUS capacity, the cost of both components increases." AG Br, p 17. As the Attorney General sees it, while it may be true that gas prices will drop as a consequence of greater access to Marcellus-Utica gas, "what we know for sure is that transportation capacity costs will go up. Therefore, the trade-off is between a known higher cost today for a potential benefit sometime in the future." AG Br, p 17-18.

- *DTE Gas' Response to the Attorney General*

DTE Gas considers the Attorney General's Code of Conduct argument to be "legally deficient" because the "assertion is nowhere found in the Code of Conduct, which is likely why the [Attorney General] failed to cite any provision from the Code of Conduct." DTE Gas Rep Br, p 44-45.

DTE Gas dismisses the Attorney General's assertions regarding "economic theory" and "common sense" by asserting that it "might be correct in the most simplistic of markets with only one producing basin and one demand center", but that it ignores the complexity of the gas market. DTE Gas Br, p 46.

As for the Attorney General's comparison to what other utilities have done to access Appalachian gas, DTE Gas argues that the Attorney General has failed to conduct a "detailed review" of various factors, and that without this review, "it is not possible to reach any conclusions for DTE Gas based on the supply portfolio changes by Consumers Energy or other gas distribution companies."

DTE Gas rebuts the Attorney General's cost savings assertions by arguing the Attorney General "is using evidence from a different case (DTE Electric's 2016 PSCR Plan case) with different impacts on gas costs (from an electric utility's perspective) and reaches an incorrect conclusion regarding DTE Gas." DTE Gas Rep Br, p 48.

By reference, DTE Gas incorporates the arguments it makes below in response to ANR.

- *ANR*

Noting that the Commission "applies a more exacting standard of review of contracts between a regulated utility and an affiliate" and citing Act 304, sections 6h(1)(b) and 6h(7), ANR argues that "Act 304 places a heavy burden on DTE Gas to present meaningful information demonstrating that the costs of the NEXUS contract for which it seeks pre-approval were incurred through reasonable and prudent actions and in a manner that minimizes its gas transportation costs." ANR Br, p 2-5.

ANR agrees with DTE Gas that obtaining access to supplies of Appalachian natural gas "would be beneficial to DTE Gas and its ratepayers." ANR Br, p 5-6. "However", ANR argues, at ANR Br, p 6:

> DTE Gas need not support NEXUS, nor more importantly incur the substantial cost of contracting for NEXUS capacity, to obtain these benefits. . . . [T]here are numerous alternatives available to DTE Gas that can provide it with access to Appalachian gas supply at a much lower cost than NEXUS and that will achieve the same gas cost savings for its ratepayers. In fact, a number of these alternatives will also provide greater reliability of service to DTE Gas than NEXUS.

Addressing the proposed alternative greenfield pipelines, ANR East and Rover, ANR notes that DTE Gas "did not submit bids in their open seasons, request rate offers for capacity . . . or otherwise engage in any negotiations with either project sponsor. ANR Br, p 7-8. ANR argues that this was because DTE Gas' Mr. Lawshe "erroneously believed DTE Gas was already committed to NEXUS", and that he "never seriously considered either of these projects". ANR Br, p 8. As ANR sees it, at ANR Br, p 10:

> [A]lthough the December 2013 precedent agreement was not a binding agreement, DTE Gas nonetheless asserts that it believed and acted as if it was committed to NEXUS under that agreement. . . . Thus, when DTE Gas met with ANR East and Rover in July 2014 to discuss their respective projects, it could not have intended to even consider these projects viable options. Clearly, DTE Gas could not have entered into a precedent agreement for 75,000 Dth/d of service with either ANR East or Rover in lieu of NEXUS if it believed, as it claims, that it was already committed to NEXUS. Indeed, Mr. Lawshe bluntly stated that DTE Gas did not participate in the ANR East and Rover open seasons because it was already committed to NEXUS.

Next, ANR questions the legitimacy of the cost analysis that DTE Gas performed. ANR argues that "it is clear that the cost analysis performed by Mr. Lawshe and subsequently 'confirmed' by DTE Gas' consultant Michael D. Sloan . . . was not intended to inform DTE Gas' selection of the lowest cost provider, but rather to justify the decision already made to support its parent-sponsored project, and to defend that decision in litigation." ANR Br, p 8.

ANR considers DTE Gas' cost studies to be "flawed in several respects, most importantly because they are premised on rates publicly posted by ANR East and Rover that DTE Gas made no attempt to negotiate." ANR Br, p 11. ANR finds it not credible that DTE Gas felt ANR East and Rover were not willing to negotiate the posted rates. ANR Br, p 12. ANR notes that "DTE Gas never asked for lower rates, never submitted a bid lower than the posted rates or otherwise indicated any interest in obtaining service from these projects." ANR Br, p 12. ANR claims that, as evidenced by his negotiations with NEXUS, Mr. Lawshe was well aware of the industry's typical process of holding an open season and opening negotiations that commonly result in rates that are lower that the posted rates. ANR Br, p 12. ANR continues, at ANR Br, p 13 (citations omitted), by arguing that:

> Mr. Lawshe attempted to justify DTE Gas' failure to negotiate with either of these other projects by stating that when DTE Gas receives rate offers for transportation service from competing pipelines, it considers each such offer to be that pipeline's "best and final offer." He explained further . . . that when a transportation contract is set to expire, DTE Gas typically contacts competing pipelines to ask for offers. DTE Gas then considers each offer received to be that pipeline's best offer and chooses the lowest cost provider without any attempt to negotiate with any of the competing providers.
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> Mr. Lawshe's explanation of its typical negotiation practice, however, is entirely inconsistent with the manner in which it chose to contract with NEXUS. . . . DTE Gas did not contact other providers to seek offers that could compete with NEXUS before it contends it committed itself to NEXUS in December 2013. Second, DTE Gas claims to have extensively negotiated rates with NEXUS but not with any other competing pipeline. More generally, if DTE Gas in fact engages in a practice of assuming every offer made by a counter-party is that party's "best and final" offer, such a practice would seemingly fail to obtain the lowest price for its customers and arguably would be imprudent.

Next, ANR notes that DTE Gas' position that NEXUS is less costly than Rover "rests solely on its forecast that fuel costs would be much lower on NEXUS". ANR Br, p 15. ANR argues that DTE Gas' fuel rate estimates to be "far too unreliable" to make such a conclusion. ANR Br, p 15. At ANR Br, p 15-16 (citations omitted), ANR explains:

> The amount of fuel that will be used . . . changes as the project develops . . . . [A]n estimated 1.22% fuel use . . . was provided to DTE Gas by NEXUS in September 2014.

> . . . In September 2015, when DTE Electric Company sought approval of its NEXUS precedent agreement in Case No. U-17920, it stated that NEXUS had increased its estimated fuel rate to 1.9%. In his direct testimony in the instant case, Mr. Lawshe stated that the NEXUS fuel rate was 1.51%. And finally, in his rebuttal testimony in the DTE Electric case, Mr. Lawshe stated that the estimate had changed again to 1.32%. . . .
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> In sum, . . . NEXUS' estimated fuel use rate has already changed five times since Mr. Lawshe estimated the 1.04 percent fuel rate he used in his July 2014 landed cost analysis. . . . It is . . . not disputed that whatever estimated fuel rate is used as NEXUS' initial fuel rates, these rates will be adjusted, either monthly, semi-annually or annually for the life of DTE Gas' contract.

ANR argues that "these changing fuel rates demonstrate the unreliability of DTE Gas' fuel use projections" and notes "that the cost analyses DTE Gas submitted in the instant proceeding are outdated and stale." ANR Br, p 17. Further, ANR argues that the unreliability of DTE Gas' gas price projections, changes in DTE Gas' basis differentials projections, and changes in market conditions "demonstrate[] the subjectivity and unreliability of DTE Gas' analyses." ANR Br, p 17-18.

In sum, ANR argues that "the reservation charges, which are known fixed payments over the course of the 15 year term of the contract, are less for ANR East and Rover than for NEXUS. In contrast, DTE Gas' fuel estimates for the three projects, which form the sole basis for its conclusion that NEXUS is less costly, are based on extremely unreliable projections over a 15 year period." ANR Br, p 18-19.

Further, ANR criticizes DTE Gas' for its failure to consider existing alternatives to new greenfield projects. ANR argues that the "record reveals several open seasons held by ANR and other existing pipelines that offered capacity designed to deliver Appalachian supply to markets in Michigan and other destinations." ANR Br, p 20. ANR contends that "[d]espite acknowledging that these alternatives would meet its objective of . . . accessing Appalachian gas supply, DTE Gas dismissed these alternatives without any analysis whatsoever based on its belief, albeit erroneous, that it had already committed to NEXUS at the time these alternative were available." ANR Br, p 20. At ANR Br, p 22-23 (citations omitted), ANR contends:

> DTE Gas could have accessed Appalachian gas supply at a transportation cost of $0.20 per Dth/d, plus fuel, rather than the $0.695, plus fuel, that it agreed to pay NEXUS. [B]y contracting for transportation from . . . pipelines already connected to the Appalachian Basin, DTE Gas could save $13.5 million per year or over $200 million over the 15 year term . . . .
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> Just as importantly for purposes of evaluating DTE Gas' precedent agreement with NEXUS, these alternatives were less expensive than NEXUS even if DTE Gas purchased transportation capacity on the upstream pipelines. For example, the maximum rate for transportation on Dominion from the Appalachian Basin to Lebanon was $0.14 per Dth/d. Combining that rate with the $0.20 per Dth/d rate for service on ANR from Lebanon to Willow Run would result in a cost of $0.34 per Dth/d for transportation back to the Appalachian Basin. This is still less than half the $0.695 rate in DTE Gas' contract with of NEXUS. With fuel, Mr. Bennett stated the rate would have been $0.52 per Dth/d. Similarly for service on both TETCo and ANR, the combined rate to DTE Gas would have been $0.37 per Dth/d and $0.50 with fuel. Mr. Bennett's testimony as to these rates has not been challenged and is unrebutted in this record.

ANR points to two alternatives existing at the time of the close of the record; an "open season for its Gulf Coast and Midwest Market Access Project ("MMAP") in March and April 2015" and "capacity . . . available to DTE Gas from either Shelbyville or Westrick." ANR Br, p 23. At ANR Br, p 24, ANR adds:

> ANR would also highlight its unrebutted testimony that transportation service on any of these existing alternatives would provide additional benefits in terms of economic flexibility and reliability of service. By obtaining firm transportation on ANR's system, DTE Gas would have the right to access other points on ANR's system on a firm secondary basis. This right would enable DTE Gas to purchase gas from suppliers at any other points on ANR's system, and deliver the gas on a secondary basis, thus increasing its choices and its negotiating leverage with gas sellers. . .
>
> In contrast, NEXUS cannot provide the same supply diversity that would allow DTE Gas to benefit from the competition from such supplies. While DTE Gas would be able to access supply through pipeline interconnects on TETCo, service on ANR would provide access to more diverse supply both within the Appalachian Basin due to its interconnections

with multiple pipelines that source such supply, as well as to other supply areas. Specifically, all of the existing alternatives discussed above, as well as ANR East, would provide DTE Gas not only supply from the Appalachian Basin, but the option to obtain supply from all basins accessed by the ANR system, including shale basins in Arkansas, Texas, Louisiana and North Dakota, as well as supply from Canada, the Anadarko Basin and the Gulf of Mexico. . . .[19]

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[19] In Case No. U-17920, DTE Electric's witness conceded that there are more options on ANR and such options "certainly could" make service on ANR and the interconnecting upstream pipeline such as Dominion more reliable than NEXUS. U-17920: 3 Tr. 584-85. The same witness also acknowledged that by obtaining access to points on the entire ANR and upstream pipeline systems, DTE Electric would also obtain the economic flexibility to purchase gas at lower prices on any day the price of gas was lower at such points than Appalachian gas supply. U-17920: 3 Tr. 586.

In addition, ANR argues that its network provides greater protection and security of supply because, "if there is a force majeure event that results in the curtailment of service from any one point, DTE Gas would have several other alternatives for having its gas delivered to its city gates. . . . Conversely, NEXUS is one single pipeline in service from the Kensington Processing Plant to Willow Run. ANR Br, p 24-25.

ANR is critical of Mr. Lawshe's explanation that DTE Gas lacked familiarity with the pipelines capable of delivering Appalachian gas. First, ANR finds this testimony "inconsistent with [his] repeated statements that DTE Gas did not consider these existing alternatives at all because they did not meet DTE Gas' long-term objectives." ANR Br, p 28. Second, ANR argues that a "lack of expertise cannot justify DTE Gas' failure to consider these options." ANR Br, p 28. "Perhaps", ANR reckons, "if DTE Gas would have retained a consultant to explore these options instead of retaining one later to justify its choice of NEXUS, it could have obtained a less costly alternative for its ratepayers." AG Br, p 28.

“In the final analysis”, ANR states, at ANR Br, p 29:

> [S]imply characterizing all of the existing capacity alternatives as insufficient to meet DTE Gas’ self-imposed requirement for a new pipeline that provides a direct route to the Appalachian Basin does not change the fact that the “reasonable and prudent” course of action for DTE Gas would have been to bid on these lower cost alternatives for ten or fifteen years instead of NEXUS.

At ANR Br, p 25-32, ANR presents a litany of reasons to suggest that DTE Gas has failed to seriously consider alternatives to NEXUS. “In sum”, ANR concludes, “given the less costly and more reliable alternatives to NEXUS that were, and continue to be, available to DTE Gas, the only reason for DTE Gas to contract with NEXUS is a desire to support its parent’s investment in the NEXUS project.” ANR Br, p 32.

At ANR Br, p 32-37, ANR argues that cost savings can be achieved via the alternatives. ANR begins by noting that Mr. Sloans ICF Gas Market Model is “only valid to the extent the market assumptions the model utilizes to project gas demand, gas supply and pipeline infrastructure for the next 15 years are accurate.” ANR Br, p 32. Assuming the models accuracy, ANR argues that the savings Mr. Sloan projects “result solely from the additional capacity that will be introduced into the market regardless of whether DTE Gas obtains service or contracts with NEXUS.” ANR Br, p 32-33. ANR argues that DTE Gas the projected savings “could be achieved by any pipeline that accesses gas in the Appalachian Basin.” ANR Br, p 33. As ANR believes “the record reveals many alternatives that were less costly than NEXUS and would have created the same or greater gas cost savings for DTE Gas.” ANR Br, p 37. At ANR Br, p 37, ANR argues:

> DTE Gas should [allow] market demand to cause additional capacity to be constructed from the Appalachian Basin to Michigan . . . and then contract for service on the least cost option. DTE Gas does not need to incur the high cost for service on NEXUS to create these savings. DTE Gas’ subscription of 75,000 Dth/d, or 5% of the capacity of NEXUS, will not

> cause NEXUS to be built, and Rover will be built in any event. DTE Gas' precedent agreement with NEXUS is neither reasonable nor prudent, and should not be approved. DTE Gas should be required to engage in a competitive and transparent process for choosing its transportation services.

ANR asks the Commission to order a Section 7 warning regarding the NEXUS related expenses, arguing that the "evidence compiled in the record overwhelmingly demonstrates that there were, and continue to be, less costly options than NEXUS for DTE Gas to access Appalachian gas supplies and reduce its gas costs." ANR Br, p 37-38. ANR asks that DTE Gas "be required in the future to engage in an open and transparent competitive process for fulfilling its transportation service needs." ANR Br, p 38.

- *DTE Gas' Reply to ANR*

DTE Gas argues that "the evidentiary record shows that DTE Gas undertook a lengthy and detailed decision making process . . . before reaching the conclusion that NEXUS was the best option to meet DTE Gas's requirements for obtaining Utica and Marcellus gas." DTE Gas Rep Br, p 14.

DTE argues that, at the time NEXUS was announced, it had short-term and long-term objectives, including: access to Appalachian gas "from a new single pipeline resource"; "fostering additional competition" to existing interstate transport providers and to existing and future supply sources; "renewing or replacing a portion of its existing transportation portfolio with a diversity of short-term (three to five year) capacity on a diversity of existing transportation paths, from a diversity of service providers, connected to a diversity of existing, mature, and liquid trading points at competitive rates", and; "obtaining short-term to mid-term transport from new major pipeline interconnects on a limited basis to gain familiarity with the pipelines providing delivery to that interconnect, depending on the maturity and expected liquidity of trading at the receipt point at that time." DTE Gas Rep Br, p 16. It is DTE Gas' position that "[i]n November 2012, DTE Gas submitted its bid in the NEXUS Open Season because the NEXUS Pipeline met DTE Gas's above long-term objectives". DTE Gas Rep Br, p 16.

To explain why, in September 2013, it didn't seek capacity on the Lebanon Lateral Reversal, DTE Gas states that the "route did not meet DTE Gas's long-term transport objectives." DTE Gas Rep Br, p 17. Addressing Rover and ANR East, at DTE Gas Rep Br, p 18-19 (citations omitted), DTE Gas argues:

> Primarily, DTE Gas did not participate in either the Rover or ANR East Open Season projects because: (1) the landed cost analysis performed in July 2014 . . . showed that NEXUS was the least cost alternative . . . ; (2) DTE Gas had already committed to the NEXUS Pipeline back in December 2013, which was prior to the time ANR East and Rover were conducting their open seasons; and (3) DTE Gas could not bid on Rover because it was a binding open season and DTE Gas had already committed to the NEXUS Pipeline as early as December 2013.

"Therefore", DTE Gas argues, "ANR's specious claim that it would have offered better terms . . . has no more credibility than the episodic plots from the 1970s era British science fiction made-for-television series, 'Space: 1999.'"[22] DTE Gas Rep Br, p 20.

DTE Gas argues that, since 2012, it has "openly and transparently" expressed "its interest in acquiring long-term transportation and supply from the Appalachian Basin, and that it was assessing the merits of the NEXUS Pipeline against other available alternatives". DTE Gas Br, p 20. DTE Gas notes that it was not until July 2014 that ANR

[22] While this portion of DTE Gas' argument is not particularly susceptible to an objective critique, counsel for Applicant is reminded of Season One, Episode 2, "Force of Life", in which technician Anton Zoref's body is invaded by an alien life-force with an insatiable thirst for and ability to absorb heat. Also of note, is Season One, Episode 21, "Space Brain", which largely defies description.

East and Rover became available, and argues that by that time “DTE Gas had already made its decision for taking transport capacity on NEXUS by executing the precedent agreement in December 2013.” DTE Gas Rep Br, p 21-22.

Further, DTE Gas contends that “Mr. Sloan’s independent analysis confirms the reasonableness and prudence of DTE Gas’s commitment to NEXUS by concluding that the case with the lowest prices is the one where both Rover and Nexus are built”. DTE Gas Rep Br, p 22.

DTE Gas adds that NEXUS will provide a “significant increase in the geographic diversity of natural gas supply in DTE Gas’s portfolio”, will “increase peak day deliverability into this region”, and provide “additional security of supply in the event of natural gas shortages or pipeline outages”. DTE Gas Br, p 23-24

DTE Gas considers, to be without merit, ANR’s argument that DTE Gas failed to adequately consider alternatives to NEXUS because “in December 2013 there were no alternative interstate pipelines that met DTE Gas’s criteria for its long-term interstate transportation objectives.” DTE Gas Rep Br, p 24. In addition, DTE Gas argues that its July 2014 landed cost analysis of fourteen transportation routes “showed that the NEXUS Pipeline path provides one of the lowest landed costs of all the other routes”. DTE Gas Rep Br, p 29. At DTE Gas Rep Br, p 36-38 (citations omitted), DTE Gas adds:

> NEXUS is a “greenfield” pipeline project designed to transport growing supplies of Appalachian Basin gas including Utica and Marcellus shale gas production to customers in Michigan and the surrounding area. In contrast, the existing alternatives suggested by ANR are not “greenfield” pipelines, but pre-existing “brownfield” pipelines.
>
> * * *
>
> [S]upporting the NEXUS Pipeline as a greenfield project is desirable because the Company expects the project to reduce gas cost for GCR customers by providing access to one of the largest and fastest growing sources of supply in North America from a new single pipeline resource that

> would create additional competition with both the existing interstate transport providers and compete with existing and future supply sources feeding into those pipelines. For these reasons alone, ANR's suggested "brownfield" pipelines are not comparable to NEXUS . . . .

As to criticisms raised by ANR regarding the unreliability of fuel costs used by DTE Gas in its landed cost analysis, DTE Gas argues that its actions must be judged in light of the conditions existing at the time its decision to purchase gas was made. DTE Gas Rep Br, p 30. DTE Gas considers "changes to the information after the decision has been made" to be "[irrelevant] to the validity of the decision". DTE Gas Rep Br, p 32.

Finally, DTE Gas claims that "NEXUS is and always has been the most optimal option for DTE Gas to source Marcellus/Utica shale gas". DTE Gas Rep Br, p 41. As DTE Gas argues, NEXUS' "more direct route" "provides a more direct impact on market prices and market liquidity" and "there are advantages in being able to contract on one pipe". DTE Gas Rep Br, p 41.

iii. Discussion

a. Standard of Proof

As DTE Gas would have it, the "applicable standard of proof in this case is whether or not there is substantial evidence that DTE Gas's proposals are reasonable and prudent." DTE Gas Br, p 4.[23] For support, DTE Gas cites to both Const 1963, Art 6, 28[24]

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[23] At DTE Gas Br, p 43, DTE Gas states that "the applicable standard of proof for purposes of determining whether the Company's proposals or recommendations are reasonable and prudent is the "substantial evidence" standard, which is a lighter standard than . . . the 'preponderance of the evidence' standard.

[24] Article VI, section 28, of the Michigan Constitution reads, in part:

> **§ 28 Administrative action, review.**
> Sec. 28.
> All final decisions, findings, rulings and orders of any administrative officer or agency . . . shall be subject to direct review by the courts . . . . . This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record.

and MCL 24.285 (APA, §85)[25] For reasons that follow, DTE Gas' substantial evidence standard of proof is not adopted.

DTE Gas' reliance on Article VI, section 28, of the Michigan Constitution to support its contention that it is only burdened with some lower, substantial evidence standard, is misplaced. Article VI, section 28, of the Michigan Constitution is clearly directed at the standards that appellate courts shall use when determining the sufficiency of a Commission order. In no way, can this be considered establishing some sort of burden or standard of proof for contested administrative hearings.

Likewise, reliance on MCL 24.285 is misplaced. MCL 24.285 provides statutory requirements applicable to Commission orders. The plain language of the statutory provision requires that, when issuing an order, the Commission, not a party, must consider the record and base its order upon the competent, material, and substantial evidence, therein. It does not set standards of proof for the parties in a hearing and cannot be read to establish a standard of proof requirement for the applicant in a Plan case.

As stated by the court in *Antrim Resources v Pub Serv Comm*, 179 Mich App 603; 620, 446 NW2d 515; 523 (1989)(citations omitted):

> The reviewing court is to give due deference to the PSC's administrative expertise and is not to substitute its judgment for that of the PSC.
>
> The standard of judicial review of a decision of the PSC is whether that decision is lawful and supported by competent, material and substantial

[25] MCL 24.285 reads, in part:

> **24.285 Final decision and order.**
>
> Sec. 85.
>
> A final decision or order of an agency in a contested case . . . shall not be made except upon consideration of the record . . . and as supported by and in accordance with the competent, material, and substantial evidence.

evidence on the whole record. It is for the PSC to . . . determine how the evidence preponderated.

Absent a statutory mandate to the contrary, the Commission has historically made findings of fact, and its final conclusions, based on the preponderance of the evidence standard. In cases, such as this, it is incumbent upon the utility to convince the Commission that its actions and costs are reasonable and prudent. The Commission's duty is to weigh the competing evidence to ensure that the regulated utility is abiding by relevant legislative mandates and acting reasonably.

"Since 1892 the law has been clear: a utility must prove that its expenditures [are] reasonable and prudent before the public is compelled to pay for those expenditures." *In Re Consumers Power Co*, U-4717, Order, p 38 (March 8, 1976) (W. Ralls, concurring). "Utility companies are natural monopolies, requiring vigorous regulation for the protection of the public. Waste and extravagance is eliminated from free markets by management competence and competition. The same standards of efficient and economical management must be applied by regulators to monopolies they regulate." *In Re Consumers Power Co*, U-4717, Order, p 38 (March 8, 1976) (W. Ralls, concurring).

In this and in other recent cases, DTE Gas appears to be suggesting that it has met its burden of proof and should prevail by something less than a preponderance of the evidence. Seemingly, DTE Gas asks the Commission to adopt, for Commission decision making purposes, the principles found in the Substantial Evidence Rule[26]. Thus, rather than engaging in its traditional role of reviewing, weighing, and, in some cases, requesting additional evidence that permits the Commission to make proper and well-founded

[26] Black's Law Dictionary (9th ed) defines the Substantial Evidence Rule as: "The principle that a reviewing court should uphold an administrative body's ruling if it is supported by evidence on which the Administrative body could reasonably base its decision."

regulatory determinations, it appears that DTE Gas asks the Commission to merely accept its evidence, find that it is “substantial”, and rule that, therefore, DTE Gas’ application must be approved. This cannot be the case. Were it to accept such a standard, the Commission would be failing in its long established duties to protect the public. As DTE Gas would have it, even when the record, as a whole, is clear regarding the unreasonableness of some utility cost, the utility would still be permitted to recover this expense from its customers, so long as there is “substantial evidence” upon which the Commission might hang its hat. Such an outcome would be absurd. “Waste and imprudence are chargeable to a utility's stockholders, not its customers. This commission cannot ignore its duty.” *In Re Consumers Power Co*, U-4717, Order, p 38 (March 8, 1976) (W. Ralls, concurring). To adopt DTE Gas’ substantial evidence standard would amount to a dereliction of that duty and is not permitted.

In this case, DTE Gas’ has the burden of persuasion by, at a minimum, a preponderance of the evidence, as to the reasonableness of the rate requests it makes and the components contained therein.

b. Commission Authority to Approve Projected NEXUS Related Costs

DTE Gas requests Commission “approval of the NEXUS transportation expense as reasonable and prudent under Act 304.” DTE Gas Br, p 29. DTE Gas continues by noting that the 2014 PA contains a condition precedent that DTE Gas receive Commission approval “of all DTE Gas’s costs and expenses related to that transportation service” and requesting “that the Commission review and approve the expense associated with the Company’s NEXUS PA as part of its evaluation of the Company’s five-year forecast.” DTE Gas Br, p 32-33.

DTE Gas contends that, with regard to the Five-Year Plan, the Commission can either issue “a final order for a decision underlying a cost item if the evidentiary record for such item is adequately developed” or issue “a Section 7 warning for a cost item if the evidentiary record is not adequately developed”. DTE Gas Rep Br, p 7-8.

The Attorney General argues that the Commission lacks authority to grant such approval in a Plan case.

The statutory provisions of MCL 460.6h provide, in part:

> (6) In its final order in a gas supply and cost review, the commission shall evaluate the reasonableness and prudence of the decisions underlying the gas cost recovery plan filed by the gas utility pursuant to subsection (3), and shall approve, disapprove, or amend the gas cost recovery plan accordingly. . . .
>
> (7) In its final order in a gas supply and cost review, the commission shall evaluate the decisions underlying the 5-year forecast filed by a gas utility pursuant to subsection (4). The commission may also indicate any cost items in the 5-year forecast that on the basis of present evidence, the commission would be unlikely to permit the gas utility to recover from its customers in rates, rate schedules, or gas cost recovery factors established in the future.

Pursuant to MCL 460.6h (3):

> [DTE Gas’ GCR Plan shall describe] the expected sources and volumes of its gas supply and changes in the cost of gas anticipated over a future 12-month period specified by the commission and request[] for each of those 12 months a specific gas cost recovery factor. . . . The plan shall describe all major contracts and gas supply arrangements entered into by the utility for obtaining gas during the specified 12-month period. The description of the major contracts and arrangements shall include the price of the gas, the duration of the contract or arrangement, and an explanation or description of any other term or provision as required by the commission. The plan shall also include the gas utility's evaluation of the reasonableness and prudence of its decisions to obtain gas in the manner described in the plan, in light of the major alternative gas supplies available to the utility, and an explanation of the legal and regulatory actions taken by the utility to minimize the cost of gas purchased by the utility.

Pursuant to MCL 460.6h (4), contemporaneously with its Plan, DTE Gas must file a 5-year forecast that includes "the gas requirements of its customers, its anticipated sources of supply, and projections of gas costs." In addition, the 5-year forecast shall include "a description of all relevant major contracts and gas supply arrangements entered into or contemplated" by the utility and its suppliers, "a description of all major gas supply arrangements which the gas utility knows have been, or expects will be, entered into between the gas utility's principal pipeline suppliers and their major sources of gas, and such other information as the commission may require." MCL 460.6h (4).

As noted at *Application of Detroit Edison Co v MI Pub Service Comm*, 296 Mich App 101; 109-10, 817 NW2nd 630; 634 (2012)(citations deleted):

> [T]he PSC possesses only that authority granted to it by the Legislature. Authority must be granted by clear and unmistakable language, and so the wording in the PSC's enabling statutes must be read narrowly and in the context of the entire statutory scheme. . . . [T]he powers of administrative agencies are ... inherently limited. Their authority must hew to the line drawn by the Legislature. Our Supreme Court has repeatedly stressed the importance of this limitation on administrative agencies, stating that "'[t]he power and authority to be exercised by boards or commissions must be conferred by clear and unmistakable language, since a doubtful power does not exist.'"

In *Application of Detroit Edison,* the court was asked to interpret the revenue decoupling provisions of MCL 460.1089(6) and MCL 460.1097(4). The court found that the Commission had exceeded its authority when it approved a revenue decoupling mechanism for Detroit Edison's electric utility. The reason being that, where MCL 460.1089(6) states that the Commission "shall authorize" a revenue decoupling mechanism for qualifying natural gas utilities, MCL 460.1097(4) only provided for the Commission to "report" to the legislature about the potential effects of applying decoupling to electric utilities. Noting the differences in the language, the court stated "that a plain reading of MCL 460.1097(4) does not empower the PSC to approve or direct the use of an RDM for electric providers. If the Michigan Legislature had wanted to do so, it is plain from the language applicable to gas utilities in MCL 460.1089(6) that it could and would have made its intention clear." *Id.*

Applying the court's holding in *Application of Detroit Edison* to the facts of this case leads to the conclusion that the Commission lacks authority to grant the approval DTE Gas seeks. Both MCL 460.6h(6) and (7) address actions that the Commission must take in a Plan case. In MCL 460.6h(6), the Commission is required to evaluate the reasonableness and prudence of the decisions underlying the Plan and to approve, disapprove, or amend the Plan accordingly. Similarly, in MCL 460.6h(7) the Commission is required to evaluate the decisions underlying the 5-year forecast. However, in stark contrast to MCL 460.6h(6), MCL 460.6h(7) does not mandate that the Commission approve, disapprove, or amend the five-year forecast. Rather, MCL 460.6h(7), provides that the Commission may "indicate any cost items" for which, based on the present evidence, the Commission feels it would be unlikely to permit cost recovery in the future. Thus, a plain reading of the MCL 460.6h(6) and (7) reveals that the Commission may not approve cost items found exclusively in the five-year forecast. Had the Legislature wished to grant such authority, it is plainly obvious that, from the language in MCL 460.6h(6), it could and would have made its intention clear. As the Commission has previously concluded, "[a]lthough the language of subsection (7) does permit the Commission to evaluate decisions that form the basis of the five-year forecast, nothing in this statutory provision provides the Commission with the authority to approve of GCR costs to be incurred in future GCR plan years." *Application of DTE Gas Co*, Case No U-17691, Order, p11 (November 22, 2016).

For the reasons stated above, DTE Gas' request cannot be granted.

c. Section 7 Warning

The express statutory authority for what is commonly referred to as a Section 7 Warning is found in MCL 460.6h(7), which reads, in part:

> In its final order in a gas supply and cost review, the commission . . . may . . . indicate any cost items in the 5-year forecast that on the basis of present evidence, the commission would be unlikely to permit the gas utility to recover from its customers in rates, rate schedules, or gas cost recovery factors established in the future.

DTE Gas's planned purchase of 75,000 Dth/day transportation capacity from NEXUS is an affiliate transaction and, as such, is inherently susceptible to abuse and warrants close examination.[27] In the light of such scrutiny, it appears quite clear that since, at latest, 2012, DTE Gas has never seriously considered any alternatives to NEXUS for the long-term acquisition of 75,000 Dth/day transportation capacity. DTE Gas' various explanations for its refusal to seriously explore NEXUS alternatives are mostly unsatisfactory. For instance, its reliance on the 2013 PA is meritless as that agreement was never signed by the parties and was, clearly, never in force. It's reliance on the 2014 PA is also weak because the 2014 PA is little more than an agreement to agree and includes, as a condition precedent to execution of any service and rate agreements, the requirement that the Commission approve DTE Gas' "utilization of the [NEXUS] project and recovery of all [DTE Gas'] costs (including, but not limited to Transportation Service

[27] DTE Gas' proposed purchase of transportation capacity from NEXUS is one, of many, planned affiliate transactions involving DTE Gas, DTE Energy, DTE Pipeline, DTE Electric, and NEXUS that are largely unexplained on this record. Together, they represent portions of a contractual scheme designed to make possible and foster the success of the NEXUS pipeline project.

costs) and expenses related to the Project[28] from customers in rates, rate schedules or gas cost recovery factors established now or in the future." Exh A-31, p 9.

Since signing the 2014 PA[29], DTE Gas has chosen not to seriously pursue long-term alternative avenues of transport for Appalachian gas, even when those alternatives were less expensive than NEXUS. Part of the reason for DTE Gas' failure to avail itself of these inexpensive long-term transportation agreements is clearly because they would conflict with its planned, more expensive, long-term contract that it hopes to ink with its affiliate. As a result, DTE Gas has, apparently, signed less advantageous short-term contracts, set to expire by the hoped for NEXUS in-service date of November 1, 2017. In the case at bar, DTE Gas has failed to account for the effect this behavior has had on the cost of fuel it delivers to its customers. Further, as DTE Gas remains committed to NEXUS and as NEXUS' in-service date grows nearer with its approval still pending and construction yet to commence, it would appear that DTE Gas will again be forced to sign another round of short term contracts, at an indeterminate cost to its customers. In future GCR cases, DTE Gas needs to calculate these expenses so that the Commission may fairly assess the reasonableness of DTE Gas' NEXUS related decisions and associated costs. Furthermore, DTE Gas must continue to assess alternatives to NEXUS so that, should it sign a transportation agreement with NEXUS, the Commission may compare it to the available alternatives and determine if DTE Gas has acted in its customer's best interest. While DTE Gas' allegiance to NEXUS may

[28] The extent of these other costs is not clear, but appears to include the cost of facilities that DTE Gas will be required to build so that it can utilize the NEXUS Transportation Service, the cost of "efforts to support and cooperate with the efforts of NEXUS to obtain all Governmental Authorizations", and the costs of Phase I, i.e. the construction of DTE Gas facilities from Willow Run to Vector. See Exh A-31.

[29] It is worth reminding DTE Gas that the 2014 PA is not a service contract and by the terms of the 2014 PA, itself, DTE Gas is not required to enter into one without Commission's pre-approval. Because of this, DTE Gas is free to seek alternatives to NEXUS.

further the best interest of its unregulated affiliate, it does not necessarily do so for its customers.

The evidence presented in this case feels as much, if not more, like a pitch for its affiliate's plan to construct NEXUS as it does a presentation to establish the reasonableness of obtaining long-term capacity on the yet to be built pipeline. DTE Gas' conflation of these two distinctly separate issues is troubling. It blurs the lines between what is good for its affiliate and what is good for its customers. The record suggests two important things; that the likelihood of NEXUS' success is only marginally effected by DTE Gas' proposed contract with it and that most, if not all, of the projected gas cost savings produced by NEXUS would inure to DTE Gas regardless of whether it contracts for long-term capacity with its affiliate. These facts, in combination with DTE Gas' refusal to seriously consider cheaper more flexible NEXUS alternatives, raises serious questions about DTE Gas' motives for contracting with NEXUS and the reasonableness, for its customers, of this proposed action.

If DTE Gas ultimately does contract with NEXUS for the transportation of Appalachian gas, it will need to establish the reasonableness and prudence of the associated costs, just as it must for any contract, if it wishes to make full recovery of those costs. To do so, DTE Gas must present a transparent evidentiary presentation examining the full nature of its NEXUS arrangements. In Case No. U-17691, DTE Gas' last GCR Plan case, the Commission reiterated this principle and, after noting that NEXUS was being examined in a DTE Rate Case and a DTE Electric PSCR case, stated that the "Commission prefers to examine these issues more holistically and therefore refrains from issuing a Section 7 warning." *Application of DTE Gas Co*, U-17691, Order, p 18

(November 22, 2016). In conformity with the Commission's order in Case No. U-17691, a Section 7 Warning will not be issued in this case.

3. RESA's Proposal to Reallocate Reservation Charge

i. Findings of Fact

DTE Gas acts as the SOLR for its GCR customers and for GCC customers "should an alternative supplier fail to do so or if customers return to GCR supply". 2 Tr 59. In this role, DTE Gas maintains "an interstate transportation portfolio that is necessary to provide security of supply and serve as SOLR for all customers". 2 Tr 248. To recover the associated pipeline capacity costs and the cost of Firm Parking Service, DTE Gas proposes use of a SOLR Reservation Charge, to be charged to both GCC and GCR customers on a load proportionate basis. 2 Tr 248-49. Any revenues from capacity release, of which DTE Gas projects none, will be credited back to both customer groups. 2 Tr 250.

In Exhibit A-11, DTE Gas provided, among other things, its annual projected reservation costs, including necessary parking service, for 2016-2021. For 2016-2017, DTE Gas projects its total reservation costs of $42,073,821. 2 Tr 249-51. Exh A-11. For 2017-18, with its hoped for November 2017 addition of NEXUS to its transportation portfolio, these costs are projected to rise to $48,360,002, and jump to $56,318,410 in 2018-19 with the first full-year of proposed transportation with NEXUS. Exh A-11.

For 2016-17, DTE Gas plans to recover approximately $42.1 million, or $0.28 per Mcf, with the Reservation Charge. 2 Tr 60, 251.

RESA's witness, Mr. Dishno, proposed "that the Commission adjust the Reservation Charge paid by GCR and GCC customers to take into account the greater benefit GCR customers receive from DTE's capacity assets." 2 Tr 34. As explained by Mr. Dishno, at 2 Tr 34-35:

> The main benefit of holding pipeline capacity is the ability to transport natural gas from point A to point B through the pipeline. Delivering supply from point A to point B allows DTE to capture a market spread value between the two points on the pipeline, which ultimately lowers the average supply cost for GCR customers. Currently, DTE utilizes the pipeline assets it retains to transport gas for GCR customers to DTE's city gate. Conversely, AGSs are responsible for delivering the gas to the city-gate for GCC customers and thus GCC customers do not receive that same reduced supply costs from the Capacity Assets.
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> * * *
>
> Under the Reservation Charge proposed by DTE, GCC customers will pay a pro rata share of the costs of the Capacity Assets, but do not receive a pro rata share of the benefits stemming from those Capacity Assets.

In Exhibit RES-1, Mr. Dishno presents a model that he used "to identify the amount of reduced costs GCR customers receive because DTE utilizes the Capacity Assets for GCR deliveries."[30] 2 Tr 37. Exh RES-1. Mr. Dishno considers his model "conservative and only [an attempt] to quantify the intrinsic market value the Capacity Assets provide to GCR customers." 2 Tr 37. Mr. Dishno explains that his model does not include of cost of parking service and he adds that, if the Commission approves the inclusion of parking service costs in the Reservation Charge, "then the benefits derived from that service should be shared pro rata between GCR and GCC customers." 2 Tr 38. Mr. Dishno's proposal envisions an annual true-up mechanism once actual data becomes available. 2 Tr 40-41.

Mr. Dishno projects "that GCR customers will receive an additional $4,630,007 in reduced gas supply costs because of the Capacity Assets DTE holds during the 2016-2017 gas year." 2 Tr 42. Exh RES-1. To account for this disparity, Mr. Dishno

[30] For a more detailed explanation of Mr. Dishno's modeling, see 4 Tr 36-41.

recommends the following: that DTE Gas' 2015-16 Reservation Charge be set at $0.254 per MCF for GCC customers and $0.294 per MCF for GCR customers; that, annually, DTE Gas reconcile the Reservation Charge adjustment to account for the difference between the forecasted Pipeline Spread Value and the actual Pipeline Spread Value, and; that DTE Gas calculate a Reservation Charge adjustment in future GCR proceedings. 2 Tr 42-43. Exh RES-1.

In rebuttal, DTE Gas' witness, Mr. Lawshe, stated that Mr. Dishno's "model grossly overstates the benefits received by GCR customers by more than 360%, or more than $3.6 million." 2 Tr 321. After adjusting the model for what he considers "major flaws", Mr. Lawshe calculated "about 7 tenths of a penny per Mcf of what [Mr. Dishno] describes as a perceived benefit attributable to 'Intrinsic Spread.'" 2 Tr 321.[31] Further, Mr. Lawshe criticizes the proposed reconciliation process based on his belief that it would require the use of proxy prices; what he contends will amount to "pure speculation". 2 Tr 325-26.[32]

[31] At 2 Tr 322-25, Mr. Lawshe continues his criticism of Mr. Dishno's modeling, in sometimes contradictory fashion. For instance, at 2 Tr 322, he describes "technical errors . . . such as . . . the glaring absence of capacity release revenues". However, at 2 Tr 250, Mr. Lawshe testified that "DTE Gas is not predicting any capacity release revenue to include in the SOLR charge". Such inconsistencies draw into question Mr. Lawshe's credibility.

[32] It is noted that, in his rebuttal testimony, Mr. Lawshe contends that DTE Gas' Midstream Services already capture the Pipeline Spread Values identified in Mr. Dishno's model and applies these revenues to lower base rates that are charged to both GCR and GCC customers. 2 Tr 326. Because, as explained below, Mr. Lawshe is clearly not competent to speak to Midstream Services, his contention is not accepted as fact.

On cross-examination, when asked if he was "familiar with the Company's Midstream Services", Mr. Lashe indicated that he was, "[j]ust from a peripheral perspective", and the he was "not engaged in those activities at work." 2 Tr 443. At 2 Tr 456, when asked about "park and loan service" Mr. Lawshe indicated his limited understanding of the services. At 2 Tr 471, Mr. Lawshe, again, indicates that "Midstream Services are not something [he's] involved with". When asked to explain how he was aware that Midstream Services accounted for Mr. Dishno's concerns, he could provide little more than, "that's their job". 2 Tr 472. In short, as in the prior Plan case, it is plainly apparent that Mr. Lawshe is unqualified to testify to the specifics of Midstream Services and to the general proposition that the concerns raised by Mr. Dishno are rendered moot by these services. Mr. Lawshe did suggest that Mr. Robert Feldman, or someone on staff to Midstream Services, would be qualified to testify to these matters. 2 Tr 472-73.

ii. Positions of the Parties

a. RESA

RESA notes that the "main benefit of holding pipeline capacity is the ability to transport gas." RESA Br, p 6. RESA adds that, by using its pipeline assets, DTE Gas "is able to source lower cost gas than what it would cost to procure gas at DTE's city-gate. The price differential between buying more remote gas and transporting it to DTE's city-gate via pipeline capacity assets, and the price of buying city-gate gas is the spread value." RESA Br, p 6-7.

RESA considers DTE Gas' proposed Reservation Charge to be "unjust and unreasonable" because GCC and GCR customers will pay the same reservation charge, but do not receive the same benefit from DTE Gas' capacity assets. RESA Br, p 3. RESA contends that DTE Gas "uses its capacity assets to reduce its cost of gas for GCR customers, however this same benefit is not available to GCC customers." RESA Br, p 7. Thus, RESA argues, "GCC customers are subsidizing GCR customers through DTE's capacity reservation charge." RESA Br, p 7.

"To remedy this inequality", RESA recommends that "GCC and GCR customers be charged a different capacity reservation charge commensurate with the value that each class of customer receives from DTE's capacity assets." RESA Br, p 7-8. RESA recommends adoption of the a Reservation Adjustment as calculated by its Witness, Mr. Dishno, and as explained in its Brief, at pages 8-10, and as presented in Exhibit RES-1. Based on Mr. Dishno's calculations, RESA recommends a Reservation Charge of $0.254/Mcf for GCC customers and $0.294/Mcf for GCR customers. RESA Br, p 10.

With regard to DTE Gas' criticism of Mr. Dishno's projections, RESA characterizes them as "refinements to projections Mr. Dishno used in his model when actual data was not available." RESA Br, p 11. RESA contends that "actual data will ultimately become available after DTE makes deliveries for each gas year, and the reservation charge calculations can be trued-up based on actual delivery data." RESA Br, p 11. "More importantly", RESA continues, the "undeniable fact remains that there is value derived by GCR customers due to DTE's capacity holdings that is not shared with GCC customers." RESA Br, p 11. RESA considers it "possible to quantify that value and adjust the capacity reservation charge accordingly consistent with the Commission's intent to ensure that the capacity reservation charge 'is equitable and accurate.'" RESA Br, p 11.

RESA adds that Mr. Lawshe's criticisms regarding the accuracy of Mr. Dishno's projections do "not undermine the validity of Mr. Dishno's capacity valuation model." RESA Br, p 14. Rather, RESA argues, many work as "refinements" to the model and that, "[r]egardless, DTE's actual pipeline utilization will be known during the reconciliation process." RESA Br, p 14. At RESA Br, p 13-14, RESA explains:

> Mr. Lawshe misses the intent of Mr. Dishno's model. The model is designed to forecast the intrinsic value of DTE's pipeline assets at a point in time for a specific gas year and use the value as an initial adjustment to the Reservation Charge. The actual value received from the pipeline assets can be determined at the end of the gas year and will be adjusted and reconciled with the forecasted value. Any variance would then be added or subtracted to the next gas year's Reservation Charge adjustment. DTE can reconcile the predicted pipeline spread value with the actual pipeline spread value once known.

Next, RESA questions the credibility of Mr. Lawshe's suggestion that spread values are captured by Midstream Services and returned to customers in base rates. RESA notes that Mr. Lawshe "does not testify that DTE's midstream exchange services are the same as the pipeline spread values captured in Mr. Dishno's model, nor does he testify that all of the pipeline spread values are captured in exchange services." RESA Br, p 15. Further, RESA notes that Mr. Lawshe admits that he isn't involved with midstream services.

RESA takes the position that "pipeline spread values described by Mr. Dishno are not related to Midstream Services but rather is a quantifiable amount of reduced gas costs GCR customers receive for having the ability to utilize DTE's pipeline assets for natural gas deliveries." RESA Br, p 16.

At RESA Br, p 16-17, RESA adds:

> Thus, even assuming DTE utilizes its pipeline assets to engage in revenue generating services that are returned to distribution customers, it does not negate the fact that DTE is also at other times utilizing its pipeline assets to reduce the gas delivery costs just for GCR customers. The notion that DTE may share some benefits stemming from its pipeline holdings with both GCR and GCC customers, does not undermine Mr. Dishno's recommendation to recognize pipeline spread values that are going only to GCR customers in the calculation of the capacity reservation charge.
>
> The idea that some pipeline benefits may be recognized in base rates does not mean that all pipeline benefits are appropriately allocated between GCC and GCR customers. Mr. Dishno identified important pipeline benefits that are inequitably distributed between GCR and GCC customers.

RESA points out that, "[d]espite all of Mr. Lawshe's adjustments, Mr. Lawshe's data predicts that DTE's pipeline assets will have a $1 million, or $0.007 per Mcf, pipeline spread value for GCR customers." RESA Br, p 17. "Thus", RESA argues, "even DTE's witness's evaluation shows an inequity between GCR and GCC customers that the Commission should acknowledge and address." RESA Br, p 17.

In conclusion, RESA argues that its "model is a reasoned and reasonable method for determining the commodity cost savings that GCR customers receive from DTE's capacity assets" and asks for Commission approval of its reservation charge adjustment RESA Br, p 17-18.

b. DTE Gas' Reply to RESA

Relying upon the testimony that its witness, Mr. Lawshe, gave at U-17691, 4 Tr 474-75, DTE Gas argues that the "entire underlying premise for RESA's alternative reservation charge is complete fiction." DTE Gas Rep Br, p 68. Again based on that testimony, DTE Gas contends that, "if there is any Pipeline Spread Value, then it is already realized by GCC customers through the reduction of base rates." DTE Gas Rep Br, p 70.

Furthermore, DTE Gas argues that RESA has "failed to meet its burden for proving that the Commission should approve its alternative Reservation Charge." DTE Gas Rep Br, p 74. At DTE Gas Rep Br, p 74-75 (citations omitted), DTE Gas argues that Mr. Dishno's model "grossly overstates the benefits received by GCR customers . . . for several reasons":

> First, Mr. Dishno's model overstates interstate pipeline utilization for GCR supply by over 28 Bcf. Next, Mr. Dishno concocts formulas in his model that disregard GCR supply and transport capacity that has unfavorable pricing, but is required for operational reasons. Third, Mr. Dishno assumes a relatively high price for gas at the MichCon City Gate, which artificially creates a higher value of alleged benefits for purchasing gas into the interstate pipelines . . . . Eliminating these major flaws from Mr. Dishno's model leaves about $0.007/Mcf of what he describes as a perceived benefit attributable to "Intrinsic Spread".

After questioning the accuracy its own calculation of a $.007/Mcf benefit, DTE Gas argues that "RESA has failed to carry its burden of proof and burden of persuasion that its alternative reservation charge is reasonable and prudent." DTE Gas Rep Br, p 75-77

"Accordingly", DTE Gas argues, "the Commission should reject RESA's recommendation for an alternative reservation charge." DTE Gas Rep Br, p 77.

iii. Discussion

The Commission first established DTE Gas' Reservation Charge in Case No. U-17131, DTE Gas' 2013-14 GCR Plan Case. *Application of DTE Gas*, U-17131, Order, p 3-9 (April 15, 2014). The Reservation Charge again received Commission approval in DTE Gas' 2014-15 GCR Plan Case; Case No. U-17332. In Case No. U-17332, the Commission opted to continue with the Reservation Charges rather than to replace it with a proposed Capital Assignment Plan. *Application of DTE Gas*, U-17332, Order, p 9-14 (April 23, 2015). In that case, the Commission took "note of the ALJ's finding that the capacity acquired to meet the SOLR obligation may provide benefits to GCR customers that are not available to GCC customers." *Application of DTE Gas*, U-17332, Order, p 14 (April 23, 2015). However, the Commission also, "note[d] that IGS and RESA failed to show the extent of any such inequity or that the CAP was a feasible and appropriate mechanism to attempt to remedy any inequity. *Application of DTE Gas*, U-17332, Order, p 14 (April 23, 2015). The Commission also felt it was "not clear what benefits would actually accrue to any customer as a result of the CAP and that "[f]or these reasons and based on the scant record before it, the Commission [could not] adopt the CAP, even in concept." *Application of DTE Gas*, U-17332, Order, p 14 (April 23, 2015). In finding that the Reservation Charge should be continued, the Commission stated that "[g]oing forward, the Commission seeks to ensure that the allocation of pipeline reservations costs and associated SOLR service is equitable and accurate" and that it "expects the amount of the reservation charge to be reviewed in plan cases to make sure that it is appropriate based on actual operations and expenses, and is commensurate with the benefits afforded by SOLR service for both GCR and GCC customers." *Application of DTE Gas*, U-17332, Order, p 14 (April 23, 2015).

In Case No. U-17691, the Commission reviewed a substantively identical proposal to that presented in this case by RESA and found that it "agree[d] with RESA's initial premise that GCR customers benefit from gas commodity cost savings that are not available to GCC customers". *Application of DTE Gas*, U-17691, Order, p 24 (Nov 22, 2016). The Commission also "agree[d] with RESA that the pipeline spread value resulting in gas commodity cost savings for GCR customers is separate from midstream revenues". *Application of DTE Gas*, U-17691, Order, p 24 (Nov 22, 2016). Finally, the Commission approved RESA's proposal, "which amount[ed] to a discount for GCC customers of 30% of the reservation charge[33]. The GCR customers will be responsible for the balance of the reservation charges." *Application of DTE Gas*, U-17691, Order, p 24 (Nov 22, 2016).

In the case at bar, as it did in its last Plan case, DTE Gas has failed to take proactive measures to comply with the Commission's directives from Case No. U-17332. Its primary witness on this issue is strikingly incompetent to testify regarding many of the factual matters DTE Gas attempts to rely on. In many instances, his testimony lacks credibility. Potential witnesses who could credibly testify on the subject were not called to do so. Once again, as it did in its last Plan case, DTE Gas has adopted an obstructionist tactic that fails to move the ball forward on this issue.

[33] The Commission found that "[u]sing this 30% discount to the GCC customers resolves the complexities presented by RESA's proposed flat fee reservation charges." *Application of DTE Gas*, U-17691, Order, p 24 (Nov 22, 2016).

On the other hand, RESA's proposal attempts to comply with the Commission's directive that the Reservation Charge be appropriately based on actual operations and expenses and is commensurate with the benefits afforded both GCR and GCC customers. Mr. Dishno's capacity valuation model provides an estimate of the gas commodity savings that flows to GCR customers but not GCC customers. As it did in Case No. U-17691, RESA proposes adoption of separate reservation charges for GCC and GCR customers; charges that would be adjusted and annually reconciled based on the value each group realizes from DTE's capacity assets. RESA's proposal is familiar in form; has been previously presented to and approved, in a modified form, by the Commission; and is approved for inclusion in the Plan. A Reservation Charge of $0.254/Mcf for GCC customers and $0.294/Mcf for GCR customers is adopted.

As the Commission has already made clear, in future cases, DTE Gas is expected to cooperate in the development of an equitable and accurate mechanism that best ensures the Reservation Charge is appropriately based on actual operations and expenses and is commensurate with the benefits afforded both GCR and GCC customers. It is expected that cooperation will include the presentation of witnesses who are competent to testify about the matter.

4. <u>ANR-ALPENA Costs</u>

i. Findings of Fact

Exhibit A-9 provides a summary of DTE Gas' interstate transport currently under contract. Included in the exhibit is Contract No. 112065 with ANR Pipeline for transportation from Alliance to Alpena. Also in Exhibit A-9 is a note specifying that, for Contract No. 112065, DTE Gas plans to allocate the costs with all 50,000/d winter capacity and 20,000/d summer capacity to Distribution Rates with the remaining 30,000/d summer capacity allocated for recovery in the GCR Plan. Exh A-9. The cost of the 30,000/d summer capacity allocated for recovery in the Plan is $951,518. 3 Tr 563.

In Case No. U-16999, the Commission issued an order approving a partial settlement agreement between Staff, the Attorney General, Mich-Con, RESA, ABATE, Encana Oil & Gas, and MCAAA. In the order, at *App of Mich Consolidated Gas Co*, U-16999, Order Approving Partial Settlement Agreement, p 2, (Dec 20, 2013), the Commission stated, in part, that:

> The parties . . . agree that this rate increase is based on . . . the inclusion of the operations and maintenance expense associated with the ANR transportation agreement used to serve the company's Alpena market and Mich Con's agreement that it shall take a position in future gas cost recovery reconciliation (GCR-R) proceedings that prevents double-recovery of this expense.

At *App of Mich Consolidated Gas Co*, U-16999, Order Approving Partial Settlement Agreement, Exh A, p 2, (Dec 20, 2013), the agreement stated, in part:

> The Parties agree that the annual revenue increase of $19.9 million . . . reflects, on a non-precedential basis, the following findings and actions: . . . (c) Inclusion of the Operations and Maintenance expense ("O&M") associated with the ANR transportation agreement used to serve the Company's Alpena market and MichCon's agreement that the Company shall take a position in future GCR reconciliation proceedings that prevents double recovery of this ANR transportation expense.

At the time of the settlement, the ANR transportation agreement was ANR Alpena Contract No. 117263. 3 Tr 561. As explained by Mr. Coppola, at 3 Tr 561:

> The ANR-Alpena transportation contract was addressed in the Company's . . . General Rate Case U-16999. In that case, the Company proposed that the cost of the ANR-Alpena transportation (Contract #117263) should be removed from the GCR cost recovery mechanism and included as an O&M expense in base rates. The Company's reasoning for removing this cost from the GCR was that the ANR-Alpena transportation in effect should be considered an extension of its own transmission system

> in order to connect its storage facilities at the Woolfolk station to the Alpena gate station. The parties of the rate case settlement agreement agreed to this change and the Commission approved it in its order dated December 20, 2012.

Contract No. 117263 was amended, effective April 1, 2013, expired on December 31, 2013, and was replaced with the current ANR Alpena contract, Contract No. 122065. 2 Tr 311-12. Contact No. 122065 adds an additional 30 MDth/d capacity in the summer, resulting in a full 50 MDth/d capacity year round. 3 Tr 561. At 3 Tr 562, Mr. Coppola provides his opinion that:

> Contract #122065 is really the same as contract #117263 which it replaced. [DTE Gas] decided to expand the summer capacity of the ANR-Alpena contract, but that change does not alter the basic purpose the contract between the Company and ANR. The purpose of the transportation agreement is to serve as an extension of the Company's gas transmission system and that premise has not changed, only the amount of capacity has changed.

It is Mr. Coppola's opinion that DTE Gas "is attempting to recover costs, through the GCR mechanism, that properly belong in base rates as ordered by the Commission in Case No. U-16999." 3 Tr 559. Therefore, he recommends removal of the $951,518 of ANR-Alpena costs from the GCR plan. 3 Tr 559.

In rebuttal, at 2 Tr 309-11, Mr. Lawshe responded by testifying that:

> Witness Coppola's recommendations should not be approved and the reasons he uses to support those recommendations are flawed. The contract #117263, . . . originally covered by the settlement in Case No. U-16999 was for transportation of 50,000 Dth/day of gas in the winter and 20,000 Dth/day in the summer from the Company's Woolfolk station to Alpena. The rationale for moving the costs of this contract from the GCR to base rates is that the contract was used to move gas from the Company's storage facilities through Woolfolk and across ANR to Alpena where it would serve all customers, not just GCR customers. The AG argued in that case that this was more of a system integration; much like the Company's distribution systems. Therefore, the costs were more appropriately recovered through O&M.
>
> In a nutshell, the costs that are recovered in general service rates

> are the O&M costs included in the Alpena contract that are incurred to serve the Alpena market. However, Contract #122065, . . . does more than just serve the Alpena market. Therefore, those costs incurred under this contract that are not related to providing service to Alpena markets are properly recovered through the GCR factor.
>
> The Company segments the current contract #122065 of 50,000 Dth/day of annual capacity of which the full 50,000 Dth/day segment from Alliance to Woolfolk, which is a segment not covered in the original contract #117263, is needed and used for GCR system supply while the remaining segment from Woolfolk to Alpena is used 50,000 Dth/day winter and 20,000 Dth/day summer for system integration to connect it storage facilities at the Woolfolk station to the Alpena gate station. Accordingly, to avoid double recovery of costs, the costs of the capacity are likewise segmented consistent with the MPSC's 2012 Order in Case No. U-16999, with base rate recovery of the costs associated with the system integration capacity of 50,000 Dth/day winter and 20,000 Dth/day summer, and the remaining costs attributable to the 30,000 Dth/day summer capacity is recovered through the GCR mechanism.

ii. Positions of the Parties

In short, the Attorney General posits that "contract #122605 is really the same as contract #117263". AG Br, p 6. "Accordingly", the Attorney General argues, "the Commission should remove the $951,518 of ANR-Alpena costs from the total GCR plan costs proposed by DTE and require DTE to recover them in base rates as ordered by the Commission in U-16999." AG Br, p 6.

DTE Gas argues that, as a matter of law, the Case No. U-16999 Settlement Agreement and Order are only applicable to the now expired Contract #117263. DTE Gas Rep Br, p 57. Further, DTE Gas argues that the new Contract #122065 is not the same as the original Contract #117263 because the addition of 30,000 Dth/day of summer transportation capacity "constitutes a material change." DTE Gas Rep Br, p 57. Lastly, DTE Gas argues that it has segmented the costs to avoid double recovery. DTE Gas Rep Br, p 58-59. Therefore, DTE Gas contends the Attorney General' recommended disallowance must be rejected.

iii. Discussion

This issue was extensively litigated and argued in DTE Gas' last Plan Case, Case No. U-17691. The evidentiary record of this case is little changed from that of Case No. U-17691 and the circumstance are unchanged. In Case No. U-17691, the Commission approved DTE Gas's capacity cost allocation as part of its GCR plan. This matter is now settled and once again DTE Gas' proposed handling of these costs is approved.[34]

5. Firm Parking

i. Findings of Fact

On July 9, 2015, DTE Gas purchased a firm Parking Service for the injection, into the DTE Gas system, of 2,170,000 Dth (70,000 Dth/Day) of gas during the month of

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[34] As more fully explained in Application of DTE Gas, U-17691, PFD, p 72-73, (July 7, 2016),

> In Case No U-16999 the Commission approved the inclusion of capacity costs from Contract No. 117263 in O & M under the party's stipulation that this capacity represented an extension of DTE Gas' transportation system from Woolfolk to Alpena. This contract was later amended to make the receipt point the ANR/Alliance interconnect near Chicago. At no additional cost to DTE Gas' customers, this arrangement allowed DTE Gas to deliver gas purchased at the ANR/Alliance interconnect, maintained the extension of DTE Gas' transportation system from Woolfolk to Alpena, and contributed to DTE Gas' transportation flexibility. This amended contract was replaced by Contract #122065 which maintained all the advantages of the ANR/Alliance interconnect receipt point and added an additional 30,000 Dth/day summer capacity at the added cost of $963,908. The added expense appears reasonable. The contention, however, is that DTE Gas should not be able to include this amount as a GCR expense.
>
> As already noted above, at 4 Tr 324, Mr. Lawshe explained that:
>
> > The Company segments the current contract of 50,000 Dth/day of annual capacity of which the full 50,000 Dth/day segment from Alliance to Woolfolk, a segment not covered in the original contract, is needed and used for GCR system supply while the remaining segment from Woolfolk to Alpena is used 50,000 Dth/day winter and 20,000 Dth/day summer for system integration to connect it storage facilities at the Woolfolk station to the Alpena gate station. Accordingly, to avoid double recovery of costs, the costs of the capacity are likewise segmented consistent with the MPSC's 2012 Order in Case No. U-16999, with base rate recovery of the costs associated with the system integration capacity of 50,000 Dth/day winter and 20,000 Dth/day summer, and the remaining costs attributable to the 30,000 Dth/day summer capacity is recovered through the GCR mechanism.
>
> This allocation of costs is reasonable. By allocating only a portion of the costs for recovery via the GCR mechanism, DTE Gas avoids double recovery, as was agreed to in Case No. U-16999. Further, while expanding summer capacity and providing flexibility to DTE Gas' transportation network, the contract fulfills the original goals of the Contract No. 117263 and expands DTE Gas' access to needed supplies of natural gas. . . . DTE Gas' handling of this expense is reasonable, complies with the settlement agreement from Case No. U-16999, and is approved as part of the Plan.

December 2015 and the withdrawal of 2,170,000 Dth of gas from DTE Gas from April through October 2016. 2 Tr 251. DTE Gas purchased the service because it considers it "the most reasonable and prudent alternative to achieve the storage deliverability requirement and to meet the peak day needs of the GCR and GCC customers for the winter of 2015-16." 2 Tr 251. The Parking Service is costing DTE Gas $576,530 during this GCR year and recovery is made through the Reservation Charge. 2 Tr 252.

The Attorney General presented the testimony of its Witness, Mr. Coppola, to address DTE Gas' Parking Service. Mr. Coppola indicated that he was "not convinced that involving a third party to provide this service and paying a fee . . . was necessary." 3 Tr 574. Mr. Coppola indicated that he was "perplexed why the Company used a third party provider instead of utilizing its own storage capacity dedicated to Midstream services to achieve the desired reliability and peak day requirements." 3 Tr 574-75. Mr. Coppola adds, at 3 Tr 575-76:

> As part of its Midstream services, the Company provides services similar to Parking service under its Park and Loan services. Therefore, it would seem logical that before providing Loan and Park service for others the Company would reserve a portion of the storage capacity for its GCR and GCC customers when it becomes apparent that additional storage deliverability is necessary.
>
> The only conclusion I can reach is that the Company did not want to lose the revenue earned from providing Park and Loan services to others and instead found it more financially advantageous to continue those services while arranging for a similar service with a third party and charging GCR and GCC customers for that service.

Mr. Coppola recommended that the Commission "issue a warning to the Company that it may disallow recovery of the Firm Parking Service costs if they are found to be unreasonable or imprudently incurred." 3 Tr 576.

ii. Positions of the Parties

a. Attorney General

The Attorney General argues that DTE Gas "could have used its own storage capacity instead of using a third party provider to achieve the reliability and peak day requirements." AG Br, p 20. The Attorney General considers the service unnecessary "and may have been done simply to allow DTE to earn revenues that it would have otherwise forfeited if it had dedicated the needed storage and system capacity to . . . achieve the required storage and deliverability and peak day demand." AG Br, p 20-21. "Accordingly", the Attorney General recommends "that the Commission issue a warning to DTE that it may disallow recovery of the service costs if they are found to be unreasonable and imprudently incurred." AG Br, p 21.

b. DTE Gas

DTE Gas, first, argues that "there is no requisite statutory authority for the [Attorney General's] recommendation for a warning" because "Act 304 clearly shows that the Legislature authorized the Commission to approve, disapprove, or amend a GCR Plan." DTE Gas Rep Br, p 51. "Such a warning is only authorized for the Commission's review of five-year forecasts." DTE Gas Rep Br, p 52.

At DTE Gas Rep Br, p 52-53, DTE Gas argues:

> [The Attorney General] ignores the fact that in . . . Case No. U-16999, the December 2012 Commission Order required "the allocation of 3.95 billion cubic feet of additional gas storage space to [DTE Gas's] midstream business…and inclusion of the revenue associated with this additional storage." The [Attorney General's] suggestion would contravene the Commission's prior order and would also be inappropriate because the deliverability requirement satisfied by the park was needed solely to serve GCR and GCC customers and the cost of that service should be borne solely by those customers.

DTE Gas recommends that the Commission find “that DTE Gas’s costs for the 2.1 Bcf Park for the 2016-2017 GCR Plan Year in the amount of $576,530 are reasonable and prudent.” DTE Gas Rep Br, p 53.

iii. Discussion

The Attorney General’s argument is premised on Mr. Coppola’s testimony that indicates he is “not convinced” the service is necessary and is “perplexed” by DTE Gas’ use of a third party to provide the service. The conclusions Mr. Coppola reaches, and which the Attorney General adopts, appear to be nothing more than conjecture. This sort of evidence has limited, if any, probative value and cannot be given serious consideration. As for the Attorney General’s request that a warning be given, it goes without saying that the Commission may disallow recovery of costs if they are found to be unreasonable and imprudent.

There being no other objections to DTE Gas’ request on this issue and, based on the record, the expense otherwise appearing reasonable, DTE Gas’ Park expense of $576,530 is approved as part of the Plan.

6. <u>GCR Factor Calculation and Reservation Charge</u>

i. Findings of Fact

The Attorney General’s witness, Mr. Coppola, believes the “entire procedure of determining the commodity cost GCR factor and the Pipeline Reservation Charge is too convoluted and can be significantly simplified by using a more straightforward and conventional approach.” 3 Tr 576. To this end, he presents a proposal in Exhibit AG-5. In it, Mr. Coppola calculates a GCR Factor of $3.5124 and a Reservation Charge of $0.2880. At 3 Tr 578, he explains:

> Exhibit AG-5 shows that the planned gas commodity GCR factor for the 2016-2017 period should be $3.5124 based on the same source data used by the Company. The Company's calculation shows a proposed GCR factor of $3.44 on line 24 of Exhibit A-9. Because of the convoluted calculations performed in Exhibit A-20 and A-21, I cannot determine the reason for this difference. The difference seems to reflect the deficiency of the Company's approach. Similarly, my calculation of the Pipeline Reservation Charge shows a slightly higher number than what the Company calculated. I have calculated a charge of $0.2880 versus the Company's calculation of $0.28.

Mr. Coppola's proposed calculations erroneously fail to make an unbilled revenue adjustment and use the wrong values for storage costs. 2 Tr 64.

ii. Positions of the Parties and Discussion

Based on Mr. Coppola's evidentiary presentations, the Attorney General recommends that the Commission order DTE Gas to utilize Mr. Coppola's calculation methodology. AG Br, p 23.

DTE Gas calls for rejection of the Attorney General's recommendation arguing that it is entirely based upon the testimony of Mr. Coppola and that Mr. Coppola's calculations are in error. DTE Gas Rep Br, p 60-61.

Based on the record presented, DTE Gas' argument appears correct and the Attorney General's recommendation is rejected.

7. <u>Volume Cost Averaging Gas Purchasing Strategy</u>

i. Findings of Fact

DTE Gas proposes to continue purchasing fixed price gas under its VCA method.[35] 2 Tr 228. The purpose of the VCA is "to create price certainty for natural gas volumes that will be delivered at a future date, also known as a hedge." 2 Tr 228. VCA provides

[35] The specifics of DTE Gas' VMA are found in Exhibit A-7.

a “smoothing effect on the GCR factor” and provides a “simple” way for DTE Gas to manage gas price fluctuations and uncertainty. 2 Tr 228-29. It does not have as its primary purpose providing customers with the least costly gas. 3 Tr 473-74. “In general, DTE Gas will fix the price of its future supply requirements over a two year period prior to the start of delivery during the GCR Period [so that] 75% of [its] supply requirements will be known prior to the start of the GCR Period.” 2 Tr 229. As stated by DTE Gas witness, Mr. Lawshe, at 2 Tr 230:

> VCA allows continual market participation over an extended period of time up to two years in advance of the GCR Period start date. The methodology is consistent with the philosophy that one should not try to beat the market but instead regularly participate in the market over an extended period of time.

“VCA eliminates price speculation” because “purchases are fixed each month regardless of price.” 2 Tr 231. In addition, the VCA eliminates the use of professional expertise and judgment for purchasing decisions. 3 Tr 468-69. DTE Gas considers the use of its professional expertise for gas purchasing decisions “to be very risky in cost recovery under the regulation of a Public Service Commission.” 3 Tr 469. Therefore, DTE Gas has chosen to makes its purchases “time dependent as opposed to price dependent.” 2 Tr 231. “In a rising price environment, . . . the VCA Method will produce lower gas costs than the Index method. In a falling price environment, . . . the VCA Method will produce higher gas costs than the Index method.” 2 Tr 242.

At 2 Tr 240, Mr. Lawshe explains why he believes the VCA is reasonable and prudent, by stating:

> In general, natural gas is not a discretionary purchase that can be avoided based on price or some other factor. DTE Gas’ customers need to purchase and consume natural gas throughout the year for such basic needs as warmth in their homes and businesses. . . . DTE Gas’ customers

> should not be unduly subject to risk taking or speculating on what the price of natural gas will be in the future.

DTE Gas believes that fixing the price of 75% of its gas supply under the VCA is reasonable and prudent because it provides them operational flexibility and because it believes its customers “have a fixed amount of non-discretionary income to spend on a natural gas utility bill and would ultimately be more financially burdened with higher bills as opposed to steady or lower bills.” 2 Tr 241.

In Exhibit A-25, DTE Gas presents the results of its comparison of using the 75% VCA method versus purchases at Index over a fourteen year period ending March 2015. DTE Gas estimates that, had it used the 75% VCA method over that period, it would have resulted in additional natural gas costs of $592,039,978. Exh A-25. For the average residential customer, this equals $34 per year over the 14-year period. Exh A-25.

At 2 Tr 235-36, Mr. Lawshe explains the smoothing effect that DTE Gas estimates the VCA has on the price of gas, by stating:

> [V]olatility under the VCA Method means that, for any given year, 95% of the time the customers’ gas costs would be within a range of 30% higher or 30% lower than the average cost based on the past 14 years. By contrast, volatility under the Index Method means that, for any given year, 95% of the time the customers’ gas costs would be within a range of 62% higher or 62% lower than the average cost based on the past 14 years.

DTE Gas believes that the “annual cost difference between the VCA Method and the Index Method . . . over the historical 14 years . . . is approximately 6% of the customers’ total gas cost . . . , which is a reasonable cost to pay to lower the gas price volatility . . . . 2 Tr 236

In conformity with its VCA methodology, DTE Gas fixed 75% of its April 2016 through March 2017 gas requirements by December 31, 2015. 2 Tr 243.

ii. DTE Gas' Position and Discussion

In short, DTE Gas argues that its VCA is reasonable and prudent because, compared to purchasing gas supplies at Index, it mitigates price spikes and uncertainty for its customers. DTE Gas Br, p 13-14.

While no other party briefed this issue, because of its importance, DTE Gas' purchasing policies warrant discussion. By adopting the VCA method, DTE Gas has implemented a simple purchasing strategy that eliminates what it calls "speculation" in gas purchasing. This strategy also eliminates the application of educated professional judgement and discretion to purchasing decisions; something DTE Gas considers "very risky" when it comes to cost recovery approval by the Commission. In short, it appears clear that DTE Gas considers the VCA policy important for two primary reasons; it provides a higher level of price stability than just buying on the spot market and, DTE Gas believes, it provides them a more likely chance of full cost recovery. Providing price stability has its merits. Developing purchasing strategies for the sole purpose of increasing the likelihood of cost recovery, does not.

In this case, the evidentiary presentation for the VCA purchasing policy is largely identical to that presented in DTE Gas' last Plan case; Case No. U-17691. In Case No. U-17691, the Commission "conclude[d] that DTE Gas met its evidentiary burden of proving the reasonableness of its gas supply purchasing strategy." *Application of DTE Gas*, U-17691, Order, p 32 (Nov 22, 2016). There being no meaningful change in circumstance, the same finding is warranted in this case.

None-the-less, DTE Gas is advised that unreasonable or imprudent purchases, even if made in accordance with the VCA purchasing strategy, are subject to disallowance in the GCR reconciliation. In addition, DTE Gas is reminded that, as was stated at *Application of DTE Gas Co*, U-17332, Order, p 5-6 (April 23, 2015):

> Just as natural gas markets are not stagnant, the VCA method should be evaluated over time from a cost and risk mitigation standpoint. . . . [T]he burden continues to be on DTE Gas to manage risk and to facilitate the affordability of the natural gas sold to GCR customers. The Commission . . . wants to ensure that, over time and under a variety of actual and potential market and operating conditions, the benefits of price stability to the GCR customers outweigh any additional cost associated with the procurement strategy. Accordingly, the Commission expects DTE Gas to address the risk mitigation costs and benefits under different conditions and . . . provide a robust presentation on current and forecasted market conditions and fundamental economic and physical considerations that affect gas supply and prices, and to demonstrate the reasonableness and prudence of the company's strategy in future GCR plan and reconciliation proceedings.

III. CONCLUSION

The proposed Plan and Five-Year Forecast meet the minimal filing requirements found in MCL 460.6h(3) and MCL 460.6h(4).

In conformity with MCL 460.6h(7), the Commission has evaluated the decisions underlying the Five-Year Forecast and it is accepted for filing.

In conformity with MCL 460.6h(6), the Commission has evaluated the reasonableness and prudence of the decisions underlying the Plan. Except as otherwise explained, above, the decisions underlying the Plan and the Plan, itself, are found to be reasonable and prudent.

As explained above and as found in the record, the Application is approved as modified by the adoption of RESA's proposed Reservation Charge.

Any evidence and arguments not specifically addressed in this Proposal for Decision were deemed irrelevant to the findings and conclusions of this matter.

MICHIGAN ADMINISTRATIVE HEARING SYSTEM
For the Michigan Public Service Commission

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Mark D. Eyster
Administrative Law Judge

ISSUED AND SERVED:
January 6, 2017
Lansing, Michigan